

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 198

SENATE BILL 1235

AN ACT

AMENDING SECTIONS 32-2181, 32-2183, 32-2197.08, 45-492, 45-493, 45-494, 45-576, 45-576.03, 45-859.01, 45-896.01, 48-3701, 48-3771, 48-3772, 48-3780 AND 48-3781, ARIZONA REVISED STATUTES; RELATING TO MULTI-COUNTY WATER CONSERVATION DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-2181, Arizona Revised Statutes, is amended to read:

32-2181. Notice to commissioner of intention to subdivide lands; unlawful acting in concert; exceptions; deed restrictions; definition

A. Before offering subdivided lands for sale or lease, the subdivider shall notify the commissioner in writing of the subdivider's intention. The notice shall contain:

1. The name and address of the owner. If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of any interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.

2. The name and address of the subdivider.

3. The legal description and area of the land.

4. A true statement of the condition of the title to the land, including all encumbrances on the land, and a statement of the provisions agreed to by the holder of any blanket encumbrance enabling a purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the department containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

5. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance, lease, assignment or other instrument intended to be used, and any other information the owner or the owner's agent or subdivider desires to present.

6. A map of the subdivision ~~which~~ THAT has been filed in the office of the county recorder in the county in which the subdivision is located.

7. A brief but comprehensive statement describing the land on and the locality in which the subdivision is located.

8. A statement of the provisions that have been made for permanent access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

9. A statement as to the location of the nearest public common and high schools available for the attendance of school age pupils residing on the subdivision property.

1 10. A statement of the use or uses for which the proposed subdivision
2 will be offered.

3 11. A statement of the provisions, if any, limiting the use or
4 occupancy of the parcels in the subdivision, together with copies of any
5 restrictive covenants affecting all or part of the subdivision.

6 12. The name and business address of the principal broker selling or
7 leasing, within this state, lots or parcels in the subdivision.

8 13. A true statement of the approximate amount of indebtedness which
9 THAT is a lien on the subdivision or any part of the subdivision and which
10 THAT was incurred to pay for the construction of any on-site or off-site
11 improvement, or any community or recreational facility.

12 14. A true statement or reasonable estimate, if applicable, of the
13 amount of any indebtedness which THAT has been or is proposed to be incurred
14 by an existing or proposed special district, entity, taxing area or
15 assessment district, within the boundaries of which the subdivision, or any
16 part of the subdivision, is located, and which THAT is to pay for the
17 construction or installation of any improvement or to furnish community or
18 recreational facilities to the subdivision, and which amounts are to be
19 obtained by ad valorem tax or assessment, or by a special assessment or tax
20 upon the subdivision or any part of the subdivision.

21 15. A true statement as to the approximate amount of annual taxes,
22 special assessments or fees to be paid by the buyer for the proposed annual
23 maintenance of common facilities in the subdivision.

24 16. A statement of the provisions for easements for permanent access
25 for irrigation water where applicable.

26 17. A true statement of assurances for the completion of off-site
27 improvements, such as roads, utilities, community or recreational facilities
28 and other improvements to be included in the offering or represented as being
29 in the offering, and approval of the offering by the political subdivision
30 with authority. This statement shall include a trust agreement or any other
31 evidence of assurances for delivery of the improvements and a statement of
32 the provisions, if any, for the continued maintenance of the improvements.

33 18. A true statement of the nature of any improvements to be installed
34 by the subdivider, the estimated schedule for completion and the estimated
35 costs related to the improvements which THAT will be borne by purchasers of
36 lots in the subdivision.

37 19. A true statement of the availability of sewage disposal facilities
38 and other public utilities including water, electricity, gas and telephone
39 facilities in the subdivision, the estimated schedule for their installation,
40 and the estimated costs related to the facilities and utilities which THAT
41 will be borne by purchasers of lots in the subdivision.

42 20. A true statement as to whether all or any portion of the
43 subdivision is located in an open range or area in which livestock may roam
44 at large under the laws of this state and what provisions, if any, have been

1 made for the fencing of the subdivision to preclude livestock from roaming
2 within the subdivided lands.

3 21. If the subdivider is a subsidiary corporation, a true statement
4 identifying the parent corporation and any of the following in which the
5 parent or any of its subsidiaries is or has been involved within the past
6 five years:

7 (a) Any subdivision in this state.

8 (b) Any subdivision, wherever located, for which registration is
9 required pursuant to the federal interstate land sales full disclosure act.

10 (c) Any subdivision, wherever located, for which registration would
11 have been required pursuant to the federal interstate land sales full
12 disclosure act but for the exemption for subdivisions whose lots are all
13 twenty acres or more in size.

14 22. A true statement identifying all other subdivisions, designated in
15 paragraph 21 of this subsection, in which any of the following is or, within
16 the last five years, has been directly or indirectly involved:

17 (a) The holder of any ownership interest in the land.

18 (b) The subdivider.

19 (c) Any principal or officer in the holder or subdivider.

20 23. A true statement as to whether all or any portion of the
21 subdivision is located in territory in the vicinity of a military airport or
22 ancillary military facility as defined in section 28-8461, in territory in
23 the vicinity of a public airport as defined in section 28-8486, on or after
24 July 1, 2001, in a high noise or accident potential zone as defined in
25 section 28-8461 or on or after July 1 of the year in which the subdivision
26 becomes located in a high noise or accident potential zone. The statement
27 required pursuant to this paragraph does not require the amendment or
28 refile of any notice filed before July 1, 2001 or before July 1 of the year
29 in which the subdivision becomes located in a high noise or accident
30 potential zone.

31 24. If the subdivision is a conversion from multifamily rental to
32 condominiums as defined in section 33-1202, a true statement as to the
33 following:

34 (a) That the property is a conversion from multifamily rental to
35 condominiums.

36 (b) The date original construction was completed.

37 25. Other information and documents and certifications as the
38 commissioner may reasonably require.

39 B. The commissioner, upon application, may grant a subdivider of
40 lots or parcels within a subdivision for which a public report was previously
41 issued by the commissioner an exemption from all or part of the notification
42 requirements of subsection A of this section. The subdivider shall file a
43 statement with the commissioner indicating the change of ownership in the
44 lots or parcels together with any material changes occurring subsequent to
45 the original approval of the subdivision within which the lots or parcels are

1 located. The statement shall further refer to the original approval by the
2 commissioner.

3 C. If the subdivision is within a groundwater active management area,
4 as defined in section 45-402, the subdivider shall accompany the notice with
5 a certificate of assured water supply issued by the director of water
6 resources along with proof that all applicable ~~replenishment reserve~~ fees
7 have been paid pursuant to ~~section~~ SECTIONS 48-3772 AND 48-3774.01, unless
8 the subdivider has obtained a written commitment of water service for the
9 subdivision from a city, town or private water company designated as having
10 an assured water supply by the director of water resources pursuant to
11 section 45-576 or is exempt from the requirement pursuant to section 45-576.
12 If the subdivider has submitted a certificate of assured water supply to a
13 city, town or county prior to approval of the plat by the city, town or
14 county and this has been noted on the face of the plat, the submission
15 constitutes compliance with this subsection if the subdivider provides proof
16 to the commissioner that all applicable ~~replenishment reserve~~ fees have been
17 paid pursuant to ~~section~~ SECTIONS 48-3772 AND 48-3774.01.

18 D. It is unlawful for a person or group of persons acting in concert
19 to attempt to avoid ~~the provisions of~~ this article by acting in concert to
20 divide a parcel of land or sell subdivision lots by using a series of owners
21 or conveyances or by any other method ~~which~~ THAT ultimately results in the
22 division of the lands into a subdivision or the sale of subdivided land. The
23 plan or offering is subject to ~~the provisions of~~ this article. Unlawful
24 acting in concert pursuant to this subsection with respect to the sale or
25 lease of subdivision lots requires proof that the real estate licensee or
26 other licensed professional knew or with the exercise of reasonable diligence
27 should have known that property which the licensee listed or for which the
28 licensee acted in any capacity as agent was subdivided land subject to ~~the~~
29 ~~provisions of~~ this article.

30 E. A creation of six or more lots, parcels or fractional interests in
31 improved or unimproved land, lots or parcels of any size is subject to the
32 provisions of this article except when:

33 1. Each of the lots, parcels or fractional interests represents, on a
34 partition basis, thirty-six acres or more in area of land located in this
35 state including to the centerline of dedicated roads or easements, if any,
36 contiguous to the land in which the interests are held.

37 2. The lots, parcels or fractional interests are the result of a
38 foreclosure sale, the exercise by a trustee under a deed of trust of a power
39 of sale or the grant of a deed in lieu of foreclosure. This paragraph does
40 not allow circumvention of the requirements of this article.

41 3. The lots, parcels or fractional interests are created by a valid
42 order or decree of a court pursuant to and through compliance with title 12,
43 chapter 8, article 7 or by operation of law. This paragraph does not allow
44 circumvention of the requirements of this article.

1 4. The lots, parcels or fractional interests consist of interests in
2 any oil, gas or mineral lease, permit, claim or right therein and such
3 interests are regulated as securities by the United States or by this state.

4 5. The lots, parcels or fractional interests are registered as
5 securities under the laws of the United States or the laws of this state or
6 are exempt transactions under ~~the provisions of~~ section 44-1844, 44-1845 or
7 44-1846.

8 6. The commissioner by special order exempts offerings or dispositions
9 of any lots, parcels or fractional interests from compliance with ~~the~~
10 ~~provisions of~~ this article ~~upon~~ ON written petition and ~~upon~~ ON a showing
11 satisfactory to the commissioner that compliance is not essential to the
12 public interest or for the protection of buyers.

13 F. In areas outside of groundwater active management areas established
14 pursuant to title 45, chapter 2, article 2, if the director of water
15 resources, pursuant to section 45-108, reports an inadequate on-site supply
16 of water to meet the needs projected by the developer or if no water is
17 available, the state real estate commissioner shall require that all
18 promotional material and contracts for the sale of lots in subdivisions
19 approved by the commissioner adequately display the director of water
20 resources' report or the developer's brief summary of the report as approved
21 by the commissioner on the proposed water supply for the subdivision.

22 G. The commissioner may require the subdivider to supplement the
23 notice of intention to subdivide lands and may require the filing of periodic
24 reports to update the information contained in the original notice of
25 intention to subdivide lands.

26 H. The commissioner may authorize the subdivider to file as the notice
27 of intention to subdivide lands, in lieu of some or all of the requirements
28 of subsection A of this section, a copy of the statement of record filed with
29 respect to the subdivision pursuant to the federal interstate land sales full
30 disclosure act if the statement complies with the requirements of the act and
31 the regulations pertinent to the act.

32 I. Neither a real estate sales contract, conveyance, lease, assignment
33 or other instrument to transfer any interest in subdivided land nor any
34 covenant or restriction affecting real property shall contain any provision
35 limiting the right of any party to appear or testify in support of or
36 opposition to zoning changes, building permits or any other official acts
37 affecting real property before a governmental body or official considering
38 zoning changes, building permits or any other official acts affecting real
39 property, whether the property is located within or outside of the boundaries
40 of the subdivision. All contractual provisions ~~which~~ THAT conflict with this
41 subsection are declared to be contrary to public policy. Nothing contained
42 in this subsection shall prohibit private restrictions on the use of any real
43 property.

44 J. Before offering subdivided lands for lease or sale the subdivider
45 who makes any promises through any form of advertising media that the

1 subdivided lands will be exclusively a retirement community or one which THAT
2 is limited to the residency of adults or senior citizens shall include the
3 promises in the deed restrictions affecting any interest in real property
4 within the subdivided lands.

5 Sec. 2. Section 32-2183, Arizona Revised Statutes, is amended to read:

6 32-2183. Subdivision public reports; denial of issuance;
7 unlawful sales; voidable sale or lease; order
8 prohibiting sale or lease; investigations; hearings;
9 summary orders

10 A. Upon examination of a subdivision, the commissioner, unless there
11 are grounds for denial, shall issue to the subdivider a public report
12 authorizing the sale or lease in this state of the lots, parcels or
13 fractional interests within the subdivision. The report shall contain the
14 data obtained in accordance with section 32-2181 and any other information
15 which the commissioner determines is necessary to implement the purposes of
16 this article. If any of the lots, parcels or fractional interests within the
17 subdivision are located within territory in the vicinity of a military
18 airport or ancillary military facility as defined in section 28-8461 or under
19 a military training route as delineated in the military training route map
20 prepared pursuant to section 37-102, the report shall include, in bold twelve
21 point font block letters on the first page of the report, the statements
22 required pursuant to section 28-8484, subsection A or section 32-2183.05 and,
23 if the department has been provided a map prepared pursuant to section
24 28-8484, subsection B or section 37-102, the report shall include a copy of
25 the map. The military airport report requirements do not require the
26 amendment or reissuance of any public report issued on or before December 31,
27 2001 or on or before December 31 of the year in which the lots, parcels or
28 fractional interests within a subdivision become territory in the vicinity of
29 a military airport or ancillary military facility. The military training
30 route report requirements do not require the amendment or reissuance of any
31 public report issued on or before December 31, 2004. The commissioner shall
32 require the subdivider to reproduce the report, make the report available to
33 each prospective customer and furnish each buyer or lessee with a copy before
34 the buyer or lessee signs any offer to purchase or lease, taking a receipt
35 therefor.

36 B. Notwithstanding subsection A of this section, a subdivider may
37 elect to prepare a final public report for use in the sale of improved lots
38 as defined in section 32-2101, as follows:

39 1. The subdivider shall prepare the public report and provide a copy
40 of the report to the commissioner with the submission of the notification
41 required by sections 32-2181 and 32-2184 and shall comply with all other
42 requirements of this article.

43 2. An initial filing fee of five hundred dollars or an amended filing
44 fee of two hundred fifty dollars shall accompany the notification required by
45 paragraph 1 of this subsection.

1 3. The department shall assign a registration number to each
2 notification and public report submitted pursuant to this subsection and
3 shall maintain a database of all of these submissions. The subdivider shall
4 place the number on each public report.

5 4. The department shall determine within fifteen business days after
6 the receipt of the notification and public report whether the notification
7 and public report are administratively complete. The commissioner either may
8 issue a certification that the notification and public report are
9 administratively complete or may deny issuance of the certification if it
10 appears that the application or project is not in compliance with all legal
11 requirements, that the applicant has a background of violations of state or
12 federal law or that the applicant or project presents an unnecessary risk of
13 harm to the public.

14 5. A subdivider may commence sales or leasing activities as permitted
15 under this article after obtaining a certificate of administrative
16 completeness from the commissioner.

17 6. Before or after the commissioner issues a certificate of
18 administrative completeness, the department may examine any public report,
19 subdivision or applicant that has applied for or received the
20 certificate. If the commissioner determines that the subdivider or
21 subdivision is not in compliance with any requirement of state law or that
22 grounds exist under this chapter to suspend, deny or revoke a public report,
23 the commissioner may commence an administrative action under section 32-2154
24 or 32-2157. If the subdivider immediately corrects the deficiency and comes
25 into full compliance with state law, the commissioner shall vacate any action
26 that the commissioner may have commenced pursuant to section 32-2154 or
27 32-2157.

28 7. The department shall provide forms and guidelines for the
29 submission of the notification and public report pursuant to this section.

30 C. The commissioner may suspend, revoke or deny issuance of a public
31 report on any of the following grounds:

32 1. Failure to comply with ~~any of the provisions of~~ this article or the
33 rules of the commissioner pertaining to this article.

34 2. The sale or lease would constitute misrepresentation to or deceit
35 or fraud of the purchasers or lessees.

36 3. Inability to deliver title or other interest contracted for.

37 4. Inability to demonstrate that adequate financial or other
38 arrangements acceptable to the commissioner have been made for completion of
39 all streets, sewers, electric, gas and water utilities, drainage and flood
40 control facilities, community and recreational facilities and other
41 improvements included in the offering.

42 5. Failure to make a showing that the lots, parcels or fractional
43 interests can be used for the purpose for which they are offered.

44 6. The owner, agent, subdivider, officer, director or partner,
45 subdivider trust beneficiary holding ten per cent or more direct or indirect

1 beneficial interest or, if a corporation, any stockholder owning ten per cent
2 or more of the stock in the corporation has:

3 (a) Been convicted of a felony or misdemeanor involving fraud or
4 dishonesty or involving conduct of any business or a transaction in real
5 estate, cemetery property, time-share intervals or membership camping
6 campgrounds or contracts.

7 (b) Been permanently or temporarily enjoined by order, judgment or
8 decree from engaging in or continuing any conduct or practice in connection
9 with the sale or purchase of real estate or cemetery property, time-share
10 intervals, membership camping contracts or campgrounds, or securities or
11 involving consumer fraud or the racketeering laws of this state.

12 (c) Had an administrative order entered against him by a real estate
13 regulatory agency or security regulatory agency.

14 (d) Had an adverse decision or judgment entered against him involving
15 fraud or dishonesty or involving the conduct of any business or transaction
16 in real estate, cemetery property, time-share intervals or membership camping
17 campgrounds or contracts.

18 (e) Disregarded or violated ~~any of the provisions of~~ this chapter or
19 the rules of the commissioner pertaining to this chapter.

20 (f) Controlled an entity to which subdivision (b), (c), (d) or (e)
21 applies.

22 7. Procurement or an attempt to procure a public report by fraud,
23 misrepresentation or deceit or by filing an application for a public report
24 which THAT is materially false or misleading.

25 8. Failure of the declaration for a condominium created pursuant to
26 title 33, chapter 9, article 2 to comply with the requirements of section
27 33-1215 or failure of the plat for the condominium to comply with the
28 requirements of section 33-1219. The commissioner may require an applicant
29 for a public report to submit a notarized statement signed by the subdivider
30 or an engineer or attorney licensed to practice in this state certifying that
31 the condominium plat and declaration of condominium are in compliance with
32 the requirements of sections 33-1215 and 33-1219. If the notarized statement
33 is provided, the commissioner is entitled to rely on this statement.

34 9. Failure of any blanket encumbrance or valid supplementary agreement
35 executed by the holder of the blanket encumbrance to contain provisions that
36 enable the purchaser to acquire title to a lot or parcel free of the lien of
37 the blanket encumbrance, on completion of all payments and performance of all
38 of the terms and provisions required to be made or performed by the purchaser
39 under the real estate sales contract by which the purchaser has acquired the
40 lot or parcel. The subdivider shall file copies of documents acceptable to
41 the commissioner containing these provisions with the commissioner before the
42 sale of any subdivision lot or parcel subject to a blanket encumbrance.

43 10. Failure to demonstrate permanent access to the subdivision lots or
44 parcels.

45 11. The use of the lots presents an unreasonable health risk.

1 D. It is unlawful for a subdivider to sell any lot in a subdivision
2 unless one of the following occurs:

3 1. All proposed or promised subdivision improvements are completed.

4 2. The completion of all proposed or promised subdivision improvements
5 is assured by financial arrangements acceptable to the commissioner. The
6 financial arrangements may be made in phases for common community and
7 recreation facilities required by a municipality or county as a stipulation
8 for approval of a plan for a master planned community.

9 3. The municipal or county government agrees to prohibit occupancy and
10 the subdivider agrees not to close escrow for lots in the subdivision until
11 all proposed or promised subdivision improvements are completed.

12 4. The municipal or county government enters into an assurance
13 agreement with any trustee not to convey lots until improvements are
14 completed within the portion of the subdivision containing these lots, if the
15 improvements can be used and maintained separately from the improvements
16 required for the entire subdivision plat. The agreement shall be recorded in
17 the county in which the subdivision is located.

18 E. If the subdivision is within a groundwater active management area,
19 as defined in section 45-402, the commissioner shall deny issuance of a
20 public report or the use of any exemption pursuant to section 32-2181.02,
21 subsection B unless the subdivider has been issued a certificate of assured
22 water supply by the director of water resources and has paid all applicable
23 ~~replenishment-reserve~~ fees pursuant to ~~section~~ SECTIONS 48-3772 AND
24 48-3774.01, or unless the subdivider has obtained a written commitment of
25 water service for the subdivision from a city, town or private water company
26 designated as having an assured water supply by the director of water
27 resources pursuant to section 45-576 or is exempt from the requirement
28 pursuant to section 45-576.

29 F. A subdivider shall not sell or lease or offer for sale or lease in
30 this state any lots, parcels or fractional interests in a subdivision without
31 first obtaining a public report from the commissioner except as provided in
32 section 32-2181.01 or 32-2181.02. Unless exempt, the sale or lease of
33 subdivided lands prior to issuance of the public report or failure to deliver
34 the public report to the purchaser or lessee shall render the sale or lease
35 rescindable by the purchaser or lessee. An action by the purchaser or lessee
36 to rescind the transaction shall be brought within three years of the date of
37 execution of the purchase or lease agreement by the purchaser or lessee. In
38 any rescission action, the prevailing party is entitled to reasonable
39 attorney fees as determined by the court.

40 G. Any applicant objecting to the denial of a public report, within
41 thirty days after receipt of the order of denial, may file a written request
42 for a hearing. The commissioner shall hold the hearing within twenty days
43 after receipt of the request for a hearing unless the party requesting the
44 hearing has requested a postponement. If the hearing is not held within
45 twenty days after a request for a hearing is received, plus the period of any

1 postponement, or if a proposed decision is not rendered within forty-five
2 days after submission, the order of denial shall be rescinded and a public
3 report issued.

4 H. On the commissioner's own motion, or when the commissioner has
5 received a complaint and has satisfactory evidence that the subdivider or the
6 subdivider's agent is violating ~~any provision set forth in~~ this article or
7 the rules of the commissioner or has engaged in any unlawful practice as
8 defined in section 44-1522 with respect to the sale of subdivided lands or
9 deviated from the provisions of the public report, the commissioner may
10 investigate the subdivision project and examine the books and records of the
11 subdivider. For the purpose of examination, the subdivider shall keep and
12 maintain records of all sales transactions and funds received by the
13 subdivider pursuant to the sales transactions and shall make them accessible
14 to the commissioner upon reasonable notice and demand.

15 I. On the commissioner's own motion, or when the commissioner has
16 received a complaint and has satisfactory evidence that any person has
17 violated ~~any of the provisions of~~ this article or the rules of the
18 commissioner or has engaged in any unlawful practice as defined in section
19 44-1522 with respect to the sale of subdivided lands or deviated from the
20 provisions of the public report or special order of exemption, or has been
21 indicted for fraud or against whom an information for fraud has been filed or
22 has been convicted of a felony, before or after the commissioner issues the
23 public report as provided in subsection A of this section, the commissioner
24 may conduct an investigation of the matter, issue a summary order as provided
25 in section 32-2157, or hold a public hearing and, after the hearing, may
26 issue the order or orders the commissioner deems necessary to protect the
27 public interest and ensure compliance with the law, rules or public report or
28 the commissioner may bring action in any court of competent jurisdiction
29 against the person to enjoin the person from continuing the violation or
30 engaging in or doing any act or acts in furtherance of the violation. The
31 court may make orders or judgments, including the appointment of a receiver,
32 necessary to prevent the use or employment by a person of any unlawful
33 practices, or which may be necessary to restore to any person in interest any
34 monies or property, real or personal, that may have been acquired by means of
35 any practice in this article declared to be unlawful.

36 J. When it appears to the commissioner that a person has engaged in or
37 is engaging in a practice declared to be unlawful by this article and that
38 the person is concealing assets or self or has made arrangements to conceal
39 assets or is about to leave the state, the commissioner may apply to the
40 superior court, ex parte, for an order appointing a receiver of the assets of
41 the person or for a writ of ne exeat, or both.

42 K. The court, upon receipt of an application for the appointment of
43 a receiver or for a writ of ne exeat, or both, shall examine the verified
44 application of the commissioner and other evidence that the commissioner may
45 present the court. If satisfied that the interests of the public require the

1 appointment of a receiver or the issuance of a writ of ne exeat without
2 notice, the court shall issue an order appointing the receiver or issue the
3 writ, or both. If the court determines that the interests of the public will
4 not be harmed by the giving of notice, the court shall set a time for a
5 hearing and require notice be given as the court deems satisfactory.

6 L. If the court appoints a receiver without notice, the court shall
7 further direct that a copy of the order appointing a receiver be served upon
8 ON the person engaged in or engaging in a practice declared to be unlawful
9 under this article by delivering the order to the last address of the person
10 which THAT is on file with the state real estate department. The order shall
11 inform the person that the person has the right to request a hearing within
12 ten days of the date of the order and, if requested, the hearing shall be
13 held within thirty days from the date of the order.

14 Sec. 3. Section 32-2197.08, Arizona Revised Statutes, is amended to
15 read:

16 32-2197.08. Issuance of public report by commissioner on
17 timeshare plan; denial of issuance; additional
18 information; use of another state's public report

19 A. On examination of a timeshare plan, the commissioner, unless there
20 are grounds for denial, shall approve for use by the developer a public
21 report authorizing the sale or lease of the timeshare interests within the
22 timeshare plan. For all timeshare interests sold in this state, the
23 commissioner shall require the developer to reproduce the public report and
24 furnish each prospective customer with a copy, taking a receipt for each
25 copy. The public report shall be made available to each prospective
26 purchaser in written format and may also be made available in CD-ROM or other
27 electronic format as approved by the commissioner. The public report shall
28 include the following:

29 1. The name and principal address of the owner and developer.
30 2. A description of the type of timeshare interests being offered.
31 3. A description of the existing and proposed accommodations and
32 amenities of the timeshare plan, including type and number, any use
33 restrictions and any required fees for use.

34 4. A description of any accommodations and amenities that are
35 committed to be built, including:

36 (a) The developer's schedule of commencement and completion of all
37 accommodations and amenities.

38 (b) The estimated number of accommodations per site that may become
39 subject to the timeshare plan.

40 5. A brief description of the duration, phases and operation of the
41 timeshare plan.

42 6. The current annual budget if available or the projected annual
43 budget for the timeshare plan. The budget shall include:

44 (a) A statement of the amount or a statement that there is no amount
45 included in the budget as a reserve for repairs and replacement.

1 (b) The projected common expense liability, if any, by category of
2 expenditures for the timeshare plan.

3 (c) A statement of any services or expenses that are not reflected in
4 the budget and that the developer provides or pays.

5 7. A description of any liens, defects or encumbrances on or affecting
6 the title to the timeshare interests.

7 8. A statement that by midnight of the seventh calendar day after
8 execution of the purchase agreement a purchaser may cancel any purchase
9 agreement for a timeshare interest from a developer together with a statement
10 providing the name and street address where the purchaser should mail any
11 notice of cancellation. However, if, by agreement of the parties through the
12 purchase agreement, the purchase agreement allows for cancellation of the
13 purchase agreement for a period of time exceeding seven calendar days, the
14 public report shall include a statement that the cancellation of the purchase
15 agreement is allowed for that period of time exceeding seven calendar days.

16 9. A description of any bankruptcies, pending suits, adjudications or
17 disciplinary actions material to the timeshare interests of which the
18 developer has knowledge.

19 10. Any restrictions on alienation of any number or portion of any
20 timeshare interests.

21 11. Any current or expected fees or charges to be paid by timeshare
22 purchasers for the use of any amenities related to the timeshare plan.

23 12. The extent to which financial arrangements have been provided for
24 completion of all promised improvements.

25 13. If the timeshare plan provides purchasers with the opportunity to
26 participate in any exchange programs, a description of the name and address
27 of the exchange companies and the method by which a purchaser accesses the
28 exchange programs.

29 14. Any other information that the developer, with the approval of the
30 commissioner, desires to include in the public report.

31 15. If the developer is offering a multisite timeshare plan, the
32 following information, which may be disclosed in a written, graphic or
33 tabular form:

34 (a) A description of each component site, including the name and
35 address of each component site.

36 (b) The number of accommodations and timeshare periods, expressed in
37 periods of use availability, committed to the multisite timeshare plan and
38 available for use by purchasers.

39 (c) Each type of accommodation in terms of the number of bedrooms,
40 bathrooms and sleeping capacity and a statement of whether or not the
41 accommodation contains a full kitchen. For the purposes of this subdivision,
42 "full kitchen" means a kitchen having a minimum of a dishwasher, range, oven,
43 sink and refrigerator.

44 (d) A description of amenities available for use by the purchaser at
45 each component site.

1 (e) A description of the reservation system, including the following:

2 (i) The entity responsible for operating the reservation system.

3 (ii) A summary of the rules governing access to and use of the
4 reservation system.

5 (iii) The existence of and an explanation regarding any priority
6 reservation features that affect a purchaser's ability to make reservations
7 for the use of a given accommodation on a first reserved, first served basis.

8 (f) A description of any right to make any additions, substitutions or
9 deletions of accommodations or amenities and a description of the basis on
10 which accommodations and amenities may be added to, substituted in or deleted
11 from the multisite timeshare plan.

12 (g) A description of the purchaser's liability for any fees associated
13 with the multisite timeshare plan.

14 (h) The location and the anticipated relative use demand of each
15 component site in a multisite timeshare plan as well as any periodic
16 adjustment or amendment to the reservation system that may be needed in order
17 to respond to actual purchaser use patterns and changes in purchaser use
18 demand for the accommodations existing at the time within the multisite
19 timeshare plan.

20 (i) Any other information reasonably required by the commissioner or
21 established by rule necessary for the protection of purchasers of timeshare
22 interests in timeshare plans.

23 (j) Any other information that the developer, with the approval of the
24 commissioner, desires to include in the public report.

25 16. If a developer offers a nonspecific timeshare interest in a
26 multisite timeshare plan, the information set forth in paragraphs 1 through
27 14 of this subsection as to each component site.

28 17. Any other information that the commissioner determines or
29 establishes by rule is necessary to implement the purpose of this article.

30 B. In the event of denial, suspension or revocation, grounds shall be
31 set forth in writing at the time of denial, suspension or revocation. The
32 commissioner may deny, suspend or revoke the public report on any of the
33 following grounds:

34 1. Failure to comply with ~~any of the provisions of~~ this article or the
35 rules of the commissioner pertaining to this article.

36 2. The sale or lease would constitute misrepresentation to or deceit
37 or fraud of the purchasers or lessees.

38 3. Inability to demonstrate that adequate financial or other
39 arrangements acceptable to the commissioner have been made for completion of
40 the timeshare property, installation of all streets, sewers, electric, gas
41 and water utilities, drainage, flood control and other similar improvements
42 included in the offering.

43 4. The developer, including if an entity, an officer, director,
44 member, manager, partner, owner, trust beneficiary holding ten per cent or

1 more beneficial interest, stockholder owning ten per cent or more of the
2 stock or other person exercising control of the entity, has:

3 (a) Been convicted of a felony or misdemeanor involving theft, fraud
4 or dishonesty or involving the conduct of any business or a transaction in
5 real estate, cemetery property, timeshare interests or membership camping
6 campgrounds or contracts.

7 (b) Been permanently or temporarily enjoined by order, judgment or
8 decree from engaging in or continuing any conduct or practice in connection
9 with the sale or purchase of real estate, cemetery property, timeshare
10 interests, membership camping campgrounds or contracts, or securities or
11 involving consumer fraud or the Arizona racketeering laws.

12 (c) Had an administrative order entered against him by a real estate
13 regulatory agency or securities regulatory agency.

14 (d) Had an adverse decision or judgment entered against him involving
15 fraud or dishonesty or involving the conduct of any business in or a
16 transaction in real estate, cemetery property, timeshare interests or
17 membership camping campgrounds or contracts.

18 (e) Disregarded or violated ~~any of the provisions of~~ this chapter or
19 the rules of the commissioner pertaining to this chapter.

20 (f) Participated in, operated or held an interest in any entity to
21 which subdivision (b), (c), (d), or (e) of this paragraph applies.

22 5. If within this state, the timeshare property is incompatible with
23 the existing neighborhood and would introduce into a neighborhood a character
24 of property or use ~~which~~ THAT would clearly be detrimental to property values
25 in that neighborhood.

26 C. If the timeshare property is within a groundwater active management
27 area, as defined in section 45-402, the commissioner shall deny issuance of a
28 public report unless the developer has been issued a certificate of assured
29 water supply by the director of water resources and has paid all applicable
30 ~~replenishment-reserve~~ fees pursuant to ~~section~~ SECTIONS 48-3772 AND
31 48-3774.01, or unless the developer has obtained a written commitment of
32 water service for the timeshare property from a city, town or private water
33 company designated as having an assured water supply by the director of water
34 resources pursuant to section 45-576.

35 D. In addition to providing to each prospective customer a copy of the
36 public report as required in subsection A of this section, the developer
37 shall also provide to each customer before the close of any transaction
38 information and materials that identify any timeshare exchange companies
39 currently under contract and disclosure statements regarding the use of the
40 timeshare exchange companies, as well as any additional information the
41 commissioner deems appropriate.

42 E. The commissioner may authorize for use in this state by a developer
43 of a timeshare plan in which all accommodations are located outside of this
44 state a current public report that is issued by another jurisdiction or an
45 equivalent registration and disclosure document that is required before

1 offering a timeshare plan for sale, lease or use and that is issued by
2 another jurisdiction. This authorization does not constitute an exemption
3 from other applicable requirements of this article.

4 Sec. 4. Section 45-492, Arizona Revised Statutes, is amended to read:

5 45-492. Withdrawals by cities, towns and private water
6 companies within service areas; contract to supply
7 groundwater

8 A. Except as provided in subsection D of this section, in an active
9 management area, a city, town or private water company shall have the right
10 to withdraw and transport groundwater within its service area for the benefit
11 of landowners and residents within its service area, and the landowners and
12 residents are entitled to use the groundwater delivered, subject to:

13 1. ~~The provisions of~~ Articles 8 and 8.1 of this chapter relating to
14 transportation of groundwater.

15 2. Conservation requirements developed by the director pursuant to
16 article 9 of this chapter.

17 3. SECTION 45-493, SUBSECTION D.

18 B. Claims of landowners to irrigation grandfathered rights or type 1
19 or 2 non-irrigation grandfathered rights shall be subject to ~~the provisions~~
20 ~~of~~ article 5 of this chapter.

21 C. A city, town or private water company may contract to supply
22 groundwater to a city, town or private water company in the same active
23 management area if it is consistent with the management plan for the active
24 management area and section 45-576 and is approved by the director.

25 D. In an active management area, a city, town or private water company
26 whose service area has qualified as a member service area under title 48,
27 chapter 22, or as a water district member service area under title 48,
28 chapter 28, has the right to withdraw and transport groundwater within its
29 service area for the benefit of landowners and residents within its service
30 area, and the landowners and residents are entitled to use the groundwater
31 delivered, subject to ~~the provisions of~~ subsection A of this section and, to
32 the extent the groundwater delivered is considered excess groundwater as
33 defined and used in title 48, chapter 22 or 28, as applicable, subject to the
34 payment by the city, town or private water company of the replenishment tax
35 levied from time to time by a conservation district under title 48, chapter
36 22, or a water district under title 48, chapter 28, whichever is
37 applicable. A city, town or private water company shall be deemed to have
38 failed to pay the replenishment tax only if the conservation district or the
39 water district provides notice to the department of a delinquency in the
40 payment of the replenishment tax pursuant to section 48-3781, subsection G or
41 section 48-4982, subsection G, as applicable.

1 Sec. 5. Section 45-493, Arizona Revised Statutes, is amended to read:

2 45-493. Limitations on extensions of service areas; prohibition
3 on formation of private water company for irrigation
4 purpose; prohibition on service without payment of
5 tax

6 A. In an active management area, the service area of a city, town or
7 private water company may not be extended primarily for any of the following
8 purposes:

9 1. Including a well field within the service area.

10 2. Furnishing disproportionately large amounts of water to an
11 industrial or any other large water user unless it is consistent with the
12 management plan for the active management area and is approved by the
13 director.

14 3. Including irrigation acres within the exterior boundaries of the
15 service area to extinguish the right to convey irrigation grandfathered
16 rights to a non-irrigation use.

17 B. Within an active management area, a city, town or private water
18 company may not extend its service area for the purpose of withdrawing and
19 distributing groundwater for irrigation purposes.

20 C. Subsequent to the date of the designation of the active management
21 area, a private water company may not be formed within an active management
22 area to withdraw and distribute groundwater for irrigation purposes.

23 D. IF A MUNICIPAL PROVIDER WHOSE SERVICE AREA HAS QUALIFIED AS A
24 MEMBER SERVICE AREA UNDER TITLE 48, CHAPTER 22 TERMINATES WATER SERVICE TO
25 ANY PORTION OF THE SERVICE AREA AND FAILS TO PAY THE REPLENISHMENT TAX LEVIED
26 BY A CONSERVATION DISTRICT UNDER TITLE 48, CHAPTER 22 FOR THAT AREA, ANOTHER
27 MUNICIPAL PROVIDER SHALL NOT COMMENCE SERVICE OF GROUNDWATER UNDER SECTION
28 45-492, SUBSECTION A OR D OR SECTION 45-494 TO LANDOWNERS AND RESIDENTS
29 WITHIN THAT AREA WITHOUT FIRST MAKING ARRANGEMENTS TO PAY ALL OUTSTANDING
30 REPLENISHMENT TAXES TO THE CONSERVATION DISTRICT. THIS SUBSECTION DOES NOT
31 APPLY TO THE COMMENCEMENT OF SERVICE OF GROUNDWATER BY AN IRRIGATION DISTRICT
32 TO AN INDUSTRIAL USER UNDER SECTION 45-497. FOR THE PURPOSES OF THIS
33 SUBSECTION, "MUNICIPAL PROVIDER" HAS THE SAME MEANING PRESCRIBED IN SECTION
34 45-561.

35 Sec. 6. Section 45-494, Arizona Revised Statutes, is amended to read:

36 45-494. Withdrawals by irrigation districts in initial active
37 management areas

38 In an initial active management area established pursuant to section
39 45-411:

40 1. An irrigation district existing and engaged in the withdrawal,
41 delivery and distribution of groundwater as of January 1, 1977 shall have the
42 right, subject to section 45-496 AND SECTION 45-493, SUBSECTION D:

43 (a) To withdraw and transport groundwater within its service area for
44 the benefit of landowners within its service area, and the landowners are
45 entitled to use the groundwater delivered, provided claims of landowners to

1 irrigation grandfathered rights or type 1 or 2 non-irrigation grandfathered
2 rights shall be subject to ~~the provisions of~~ article 5 of this chapter.

3 (b) If legally withdrawing and transporting groundwater from outside
4 its service area for use within its service area as of January 1, 1977, to
5 continue to withdraw and transport the amount of groundwater legally being
6 withdrawn as of January 1, 1977.

7 2. An irrigation district ~~which~~ THAT was not engaged in the
8 withdrawal, delivery and distribution of groundwater as of January 1, 1977
9 shall be limited to the right, subject to section 45-496, to:

10 (a) Contract for surface water from a multi-county water conservation
11 district and deliver and distribute such water within its service area for
12 irrigation purposes.

13 (b) If, as of January 1, 1983, the district had been recommended by
14 the director to receive an allocation of municipal and industrial water from
15 the central Arizona project, contract for surface water from a multi-county
16 water conservation district and deliver such surface water to cities, towns
17 or private water companies for municipal, industrial and domestic purposes,
18 subject to the following conditions:

19 (i) The cities, towns and private water companies shall distribute the
20 water within the boundaries of the district in effect as of the date of
21 validation of the district's central Arizona project subcontract.

22 (ii) In contracting for the delivery of such surface water, the
23 district shall offer the water, first, to cities and towns ~~which~~ THAT
24 distribute water to land within the boundaries of the district or to land
25 adjacent or contiguous to the district and, second, if the cities or towns
26 are unwilling or unable to take and distribute such surface water, to private
27 water companies within the boundaries of the district ~~which~~ THAT have not
28 been recommended to receive or have not received an allocation of municipal
29 and industrial water from the central Arizona project.

30 (iii) Notwithstanding article 5 of this chapter, the original owner
31 and any new owner of a type 1 non-irrigation grandfathered right created
32 pursuant to section 45-469 ~~which~~ THAT is appurtenant to land in the district
33 to which such surface water is distributed by a city, town or private water
34 company may use groundwater withdrawn pursuant to that right only on the land
35 to which the right is appurtenant.

36 (iv) The district may amend its contract, or execute a new contract,
37 with the United States secretary of the interior and a multi-county water
38 conservation district to provide for the conversion of irrigation water
39 deliveries to municipal and industrial water deliveries as provided by law
40 and pursuant to the secretary's regulations relating to conversion, but such
41 amendment may be made or new contract executed only if the amount of
42 municipal and industrial water for which the district would qualify by
43 conversion of lands from irrigation to non-irrigation uses exceeds the
44 secretary's initial express allocation of municipal and industrial water to
45 the district for the year 2034 and only to the extent of the excess.

1 (v) Such surface water shall not be distributed by any city, town or
2 private water company to any land with respect to which an allocation of
3 municipal and industrial water from the central Arizona project has been made
4 or recommended for some person other than the district.

5 (c) Contract to purchase, deliver and distribute effluent within its
6 service area for irrigation purposes.

7 (d) Withdraw, deliver and distribute within its service area the
8 amount of groundwater allowed by the current irrigation water duty of each
9 member farm multiplied by the water duty acres in that farm less any portion
10 of such amount withdrawn by individual members.

11 (e) Continue but not expand any non-irrigation water service being
12 lawfully provided as of the date of the designation of the active management
13 area, except as provided in subdivision (b) of this paragraph and in section
14 45-497, subsection B.

15 Sec. 7. Section 45-576, Arizona Revised Statutes, is amended to read:

16 45-576. Certificate of assured water supply; designated cities,
17 towns and private water companies; exemptions;
18 definition

19 A. A person who proposes to offer subdivided lands, as defined in
20 section 32-2101, for sale or lease in an active management area shall apply
21 for and obtain a certificate of assured water supply from the director prior
22 to presenting the plat for approval to the city, town or county in which the
23 land is located, where such is required, and prior to filing with the state
24 real estate commissioner a notice of intention to offer such lands for sale
25 or lease, pursuant to section 32-2181, unless the subdivider has obtained a
26 written commitment of water service for the subdivision from a city, town or
27 private water company designated as having an assured water supply pursuant
28 to this section.

29 B. A city, town or county may approve a subdivision plat only if the
30 subdivider has obtained a certificate of assured water supply from the
31 director or the subdivider has obtained a written commitment of water service
32 for the subdivision from a city, town or private water company designated as
33 having an assured water supply pursuant to this section. The city, town or
34 county shall note on the face of the approved plat that a certificate of
35 assured water supply has been submitted with the plat or that the subdivider
36 has obtained a written commitment of water service for the proposed
37 subdivision from a city, town or private water company designated as having
38 an assured water supply pursuant to this section.

39 C. The state real estate commissioner may issue a public report
40 authorizing the sale or lease of subdivided lands only if ON COMPLIANCE WITH
41 EITHER OF THE FOLLOWING:

42 1. The subdivider, owner or agent has obtained a certificate of
43 assured water supply from the director and has paid ANY ACTIVATION FEE
44 REQUIRED UNDER SECTION 48-3772, SUBSECTION A, PARAGRAPH 7, AND any

1 replenishment reserve fee required under section 48-3774.01, subsection A,
2 paragraph 2. ~~or~~

3 2. If the subdivider has obtained a written commitment of water
4 service for the lands from a city, town or private water company designated
5 as having an assured water supply pursuant to this section AND THE
6 SUBDIVIDER, OWNER OR AGENT HAS PAID ANY ACTIVATION FEE REQUIRED UNDER SECTION
7 48-3772, SUBSECTION A, PARAGRAPH 7.

8 D. The director shall designate private water companies in active
9 management areas that have an assured water supply. If a city or town
10 acquires a private water company that has contracted for central Arizona
11 project water, the city or town shall assume the private water company's
12 contract for central Arizona project water.

13 E. The director shall designate cities and towns in active management
14 areas where an assured water supply exists. If a city or town has entered
15 into a contract for central Arizona project water, the city or town is deemed
16 to continue to have an assured water supply until December 31,
17 1997. Commencing on January 1, 1998, the determination that the city or town
18 has an assured water supply is subject to review by the director and the
19 director may determine that a city or town does not have an assured water
20 supply.

21 F. The director shall notify the mayors of all cities and towns in
22 active management areas and the chairmen of the boards of supervisors of
23 counties in which active management areas are located of the cities, towns
24 and private water companies designated as having an assured water supply and
25 any modification of that designation within thirty days of the designation or
26 modification. If the service area of the city, town or private water company
27 has qualified as a member service area pursuant to title 48, chapter 22,
28 article 4, the director shall also notify the conservation district of the
29 designation or modification and shall report the projected average annual
30 replenishment obligation for the member service area based on the projected
31 and committed average annual demand for water within the service area during
32 the effective term of the designation or modification subject to any
33 limitation in an agreement between the conservation district and the city,
34 town or private water company. For each city, town or private water company
35 that qualified as a member service area under title 48, chapter 22 and was
36 designated as having an assured water supply before January 1, 2004, the
37 director shall report to the conservation district on or before January 1,
38 2005 the projected average annual replenishment obligation based on the
39 projected and committed average annual demand for water within the service
40 area during the effective term of the designation subject to any limitation
41 in an agreement between the conservation district and the city, town or
42 private water company. Persons proposing to offer subdivided lands served by
43 those designated cities, towns and private water companies for sale or lease
44 are exempt from applying for and obtaining a certificate of assured water
45 supply.

1 G. This section does not apply in the case of the sale of lands for
2 developments that are subject to a mineral extraction and processing permit
3 or an industrial use permit pursuant to sections 45-514 and 45-515.

4 H. The director shall adopt rules to carry out the purposes of this
5 section no later than January 1, 1995.

6 I. For the purposes of this section, "assured water supply" means all
7 of the following:

8 1. Sufficient groundwater, surface water or effluent of adequate
9 quality will be continuously available to satisfy the water needs of the
10 proposed use for at least one hundred years. Beginning January 1 of the
11 calendar year following the year in which a groundwater replenishment
12 district is required to submit its preliminary plan pursuant to section
13 45-576.02, subsection A, paragraph 1, with respect to an applicant that is a
14 member of the district, "sufficient groundwater" for THE purposes of this
15 paragraph means that the proposed groundwater withdrawals that the applicant
16 will cause over a period of one hundred years will be of adequate quality and
17 will not exceed, in combination with other withdrawals from land in the
18 replenishment district, a depth to water of one thousand feet or the depth of
19 the bottom of the aquifer, whichever is less. In determining depth to water
20 for the purposes of this paragraph, the director shall consider the
21 combination of:

22 (a) The existing rate of decline.

23 (b) The proposed withdrawals.

24 (c) The expected water requirements of all recorded lots that are not
25 yet served water and that are located in the service area of a municipal
26 provider.

27 2. The projected groundwater use is consistent with the management
28 plan and achievement of the management goal for the active management area.

29 3. The financial capability has been demonstrated to construct the
30 water facilities necessary to make the supply of water available for the
31 proposed use, including a delivery system and any storage facilities or
32 treatment works. The director may accept evidence of the construction
33 assurances required by section 9-463.01, 11-806.01 or 32-2181 to satisfy this
34 requirement.

35 J. IF THE DIRECTOR DESIGNATES A MUNICIPAL PROVIDER AS HAVING AN
36 ASSURED WATER SUPPLY UNDER THIS SECTION AND THE DESIGNATION LAPSES OR
37 OTHERWISE TERMINATES WHILE THE MUNICIPAL PROVIDER'S SERVICE AREA IS A MEMBER
38 SERVICE AREA OF A CONSERVATION DISTRICT, THE MUNICIPAL PROVIDER OR ITS
39 SUCCESSOR SHALL CONTINUE TO COMPLY WITH THE CONSISTENCY WITH MANAGEMENT GOAL
40 REQUIREMENTS IN THE RULES ADOPTED BY THE DIRECTOR UNDER SUBSECTION H OF THIS
41 SECTION AS IF THE DESIGNATION WAS STILL IN EFFECT WITH RESPECT TO THE
42 MUNICIPAL PROVIDER'S DESIGNATION USES. WHEN DETERMINING COMPLIANCE BY THE
43 MUNICIPAL PROVIDER OR ITS SUCCESSOR WITH THE CONSISTENCY WITH MANAGEMENT GOAL
44 REQUIREMENTS IN THE RULES, THE DIRECTOR SHALL CONSIDER ONLY WATER DELIVERED
45 BY THE MUNICIPAL PROVIDER OR ITS SUCCESSOR TO THE MUNICIPAL PROVIDER'S

1 DESIGNATION USES. A PERSON IS THE SUCCESSOR OF A MUNICIPAL PROVIDER IF THE
2 PERSON COMMENCES WATER SERVICE TO USES THAT WERE PREVIOUSLY DESIGNATION USES
3 OF THE MUNICIPAL PROVIDER. ANY GROUNDWATER DELIVERED BY THE MUNICIPAL
4 PROVIDER OR ITS SUCCESSOR TO THE MUNICIPAL PROVIDER'S DESIGNATION USES IN
5 EXCESS OF THE AMOUNT ALLOWED UNDER THE CONSISTENCY WITH MANAGEMENT GOAL
6 REQUIREMENTS IN THE RULES SHALL BE CONSIDERED EXCESS GROUNDWATER FOR PURPOSES
7 OF TITLE 48, CHAPTER 22. FOR THE PURPOSES OF THIS SUBSECTION, "DESIGNATION
8 USES" MEANS ALL WATER USES SERVED BY A MUNICIPAL PROVIDER ON THE DATE THE
9 MUNICIPAL PROVIDER'S DESIGNATION OF ASSURED WATER SUPPLY LAPSES OR OTHERWISE
10 TERMINATES AND ALL RECORDED LOTS WITHIN THE MUNICIPAL PROVIDER'S SERVICE AREA
11 THAT WERE NOT BEING SERVED BY THE MUNICIPAL PROVIDER ON THAT DATE BUT THAT
12 RECEIVED FINAL PLAT APPROVAL FROM A CITY, TOWN OR COUNTY ON OR BEFORE THAT
13 DATE. DESIGNATION USES DO NOT INCLUDE INDUSTRIAL USES SERVED BY AN
14 IRRIGATION DISTRICT UNDER SECTION 45-497.

15 Sec. 8. Section 45-576.03, Arizona Revised Statutes, is amended to
16 read:

17 45-576.03. Director's review of plans

18 A. Within sixty days after receiving a groundwater replenishment
19 district's preliminary and long-range plans pursuant to section 45-576.02,
20 the director shall determine if the district has submitted sufficient
21 information to determine whether the district's plan for operation is
22 consistent with the management goal of the active management area. If the
23 director determines that the information is insufficient for such a
24 determination, the director shall notify the district of the insufficiency in
25 writing and shall specify what additional information is required. The
26 district shall provide the information to the director within thirty days
27 after receiving the notice.

28 B. On determining that the district's preliminary or long-range plan
29 is complete, the director shall publish notice in a newspaper of general
30 statewide circulation once each week for two consecutive weeks:

31 1. Requesting public comment concerning information supplied by the
32 district to meet the requirements of section 45-576.02.

33 2. Setting a date and location of a public hearing to be held pursuant
34 to subsection C of this section.

35 C. The director shall hold a public hearing within sixty days after
36 the last day of notice under subsection B of this section. The hearing shall
37 be conducted in an informal manner without adhering to the rules of evidence
38 required in judicial proceedings. Any person, including the department,
39 shall have an opportunity to comment on or to present evidence concerning the
40 submitted plan.

41 D. The district shall respond in writing to all public comments
42 whether received at the hearing or otherwise received by a date announced by
43 the director.

44 E. Within one hundred twenty days after the hearing on the preliminary
45 plan, the director shall issue a preliminary decision determining whether or

1 not the plan for district operation shall be designated as being consistent
2 with achieving the management goal. If the director determines that the
3 preliminary plan for district operation is consistent with achieving the
4 management goal, the designation expires on January 1 of the thirteenth
5 calendar year following the calendar year in which the district is
6 established. Within one hundred twenty days after the hearing on the
7 long-range plan, the director shall issue a final decision determining
8 whether or not the plan for district operation shall be designated as being
9 consistent with achieving the management goal. The director shall include
10 findings with the decision and a summary of all public comments received in
11 writing and public comments made at the public hearing.

12 F. The director shall issue a decision that the district's plan for
13 operation is consistent with achieving the management goal if the director
14 finds that the district has the current capability to meet the district
15 members' replenishment obligations for the five calendar years following the
16 calendar year in which the district submits its plan and, in addition, the
17 director makes either of the following findings, as applicable:

18 1. If the director is evaluating the preliminary plan, that the
19 district has established an adequate plan for obtaining financing and water
20 resources that are necessary to meet the district members' replenishment
21 obligations through the eighteenth calendar year following the year in which
22 the district is established.

23 2. If the director is evaluating the long-range plan, that the
24 district has established an adequate plan to meet the projected replenishment
25 obligations through the first calendar year in which achieving safe-yield is
26 required.

27 G. Unless the district successfully appeals the director's decision
28 pursuant to subsection H of this section, if the director has made a
29 determination that the district's plan for operation is not consistent with
30 achieving the management goal, the director shall notify the district of the
31 inconsistency in writing and shall specify how the district's plan for
32 operation is inconsistent with achieving the management goal. The district
33 shall modify its proposed plan and resubmit the plan, and the director shall
34 review the plan as provided by section 45-576.02 and this section, except
35 that the director shall only hold a hearing regarding those matters that the
36 district has modified in its resubmitted plan.

37 H. The director's determination under subsection E of this section is
38 subject to rehearing or review and to judicial review as provided in section
39 45-114, subsection C, but the court shall not issue a temporary restraining
40 order or preliminary injunction to prevent the director from acting under
41 this chapter while the action is pending.

42 I. Within sixty days after receiving a conservation district's plan or
43 a water district's plan pursuant to section 45-576.02, including a revised
44 plan pursuant to subsection R of this section, the director shall determine
45 if the conservation district or water district, as the case may be, has

1 submitted sufficient information to determine whether the conservation
2 district's plan for operation is consistent with the management goals of each
3 of the active management areas in which a member land or member service area
4 is or may be located or whether the water district's plan for operation is
5 consistent with the management goal of the active management area in which a
6 water district member land or a water district member service area is or may
7 be located. If the director determines that the information is insufficient
8 for such a determination, the director shall notify the conservation district
9 or water district, as the case may be, of the insufficiency in writing and
10 shall specify what additional information is required. The conservation
11 district or water district, as the case may be, shall provide the information
12 to the director within a reasonable time as specified by the director.

13 J. On determining that the conservation district's plan or the water
14 district's plan, as the case may be, is complete, the director shall publish
15 notice in a newspaper of general statewide circulation once each week for two
16 consecutive weeks:

17 1. Requesting public comment concerning information supplied by the
18 conservation district or water district, as the case may be, to meet the
19 requirements of section 45-576.02.

20 2. Setting a date and location of a public hearing to be held pursuant
21 to subsection K of this section.

22 K. The director shall hold a public hearing within sixty days after
23 the last day of the notice under subsection J of this section. The hearing
24 shall be conducted in an informal manner without adhering to the rules of
25 evidence required in judicial proceedings. Any person, including the
26 department, shall have an opportunity to comment on or to present evidence
27 concerning the submitted plan.

28 L. The conservation district or the water district, as the case may
29 be, shall respond in writing to all public comments whether received at the
30 hearing or otherwise received by a date announced by the director.

31 M. Within sixty days after the hearing on the first plan required
32 under section 45-576.02, subsection C or the first plan required under
33 section 45-576.02, subsection E and within one hundred twenty days after the
34 hearing on any subsequent plan required under section 45-576.02, subsection C
35 or E, including a revised plan pursuant to subsection R of this section, the
36 director shall issue a decision for each of the active management areas in
37 which a member land or member service area is or may be located, and the
38 active management area in which a water district member land or water
39 district member service area is or may be located, determining whether or not
40 the plan submitted with respect to an active management area shall be
41 designated as being consistent with achieving the management goal of the
42 active management area. If the director determines that the plan submitted
43 for an active management area is consistent with achieving the management
44 goal of that active management area, the designation expires on January 1 of
45 the year following the year in which the conservation district or the water

1 district, as the case may be, is required to submit its next plan under
2 section 45-576.02, subsections C and E. The director shall include findings
3 with the decision and a summary of all public comments received in writing
4 and public comments made at the public hearing.

5 N. The director shall make a determination that the conservation
6 district's plan is consistent with achieving the management goal for each
7 active management area if all of the following have been demonstrated:

8 1. The conservation district has identified sufficient water supplies
9 to meet its replenishment obligations for current members during the twenty
10 calendar years following the submission of the plan and has identified
11 additional water supplies potentially available for the district's projected
12 groundwater replenishment obligations for the one hundred calendar years
13 following the submission of the plan for current members and potential
14 members based on reasonable projections of real property and service areas
15 that could qualify for membership in the ten years following the submission
16 of the plan.

17 2. The REPLENISHMENT RESERVE TARGET FOR EACH ACTIVE MANAGEMENT AREA
18 WAS CALCULATED AS PRESCRIBED IN SECTION 48-3772, SUBSECTION E, AND THE
19 district is developing a replenishment reserve in each active management area
20 pursuant to section 48-3772, subsection E.

21 3. The conservation district has identified sufficient capacity at
22 storage facilities and projects to be used for replenishment purposes during
23 the twenty calendar years following the submission of the plan.

24 4. THE DISTRICT HAS MADE A REASONABLE ESTIMATE OF ITS PROJECTED
25 REPLENISHMENT OBLIGATIONS FOR THE ONE HUNDRED CALENDAR YEARS FOLLOWING THE
26 SUBMISSION OF THE TEN-YEAR PLAN AS REQUIRED BY SECTION 45-576.02, SUBSECTION
27 C, PARAGRAPH 2, SUBDIVISION (b).

28 O. The director shall issue a decision that the water district's plan
29 is consistent with achieving the management goal of the active management
30 area in which the water district is located if the director finds that the
31 water district has the current capability to meet the current and projected
32 water district groundwater replenishment obligation, as that term is defined
33 and used in title 48, chapter 28, for the five calendar years following the
34 calendar year in which the water district submits its plan and, in addition,
35 the director finds the water district has established an adequate plan to
36 meet the projected water district groundwater replenishment obligation for
37 the twenty calendar years following the calendar year in which the plan was
38 submitted.

39 P. Unless the conservation district or water district successfully
40 appeals the director's decision pursuant to subsection Q of this section, if
41 the director has made a determination for one or more active management areas
42 that the conservation district's plan for operation or the water district's
43 plan is not consistent with achieving the management goal of an active
44 management area, the director shall notify the conservation district or water
45 district, as the case may be, of the inconsistency in writing and shall

1 specify how the conservation district's plan for operation or the water
2 district's plan is inconsistent with achieving the management goal. The
3 conservation district or water district, as the case may be, shall modify its
4 proposed plan and resubmit the plan within sixty days after it has been
5 notified in writing of the director's decision, and the director shall review
6 the plan as provided by section 45-576.02 and this section, except that the
7 director shall only hold a hearing regarding those matters that the
8 conservation district or water district, as the case may be, has modified in
9 its resubmitted plan.

10 Q. The director's determination under subsection M or R of this
11 section is subject to rehearing or review and to judicial review as provided
12 in section 45-114, subsection C, but the court shall not issue a temporary
13 restraining order or preliminary injunction to prevent the director from
14 acting under this chapter while the action is pending.

15 R. If, at any time between the second anniversary and the sixth
16 anniversary of the director's determination of consistency with the
17 management goal, the director determines that there has been either an
18 unexpected increase in the conservation district's projected groundwater
19 replenishment obligations or an unexpected reduction in water supplies
20 available to meet the conservation district's current obligations such that
21 the conservation district's plan no longer demonstrates consistency with the
22 management goal for one or more active management areas, the director may
23 SHALL require the conservation district to submit a revised plan for
24 operation. The revised plan for operation shall be submitted within two
25 calendar years of the date that the director notifies the conservation
26 district of such a determination. The director shall review, hold a hearing
27 on and make a determination on the revised plan as provided by this section,
28 except that the director shall only hold a hearing regarding those conditions
29 that have changed.

30 S. Unless the conservation district successfully appeals the
31 director's determination pursuant to subsection Q of this section, if the
32 director has made a determination for one or more active management areas
33 that the conservation district's revised plan for operation is not consistent
34 with achieving the management goal of that active management area pursuant to
35 this section and the conservation district is unable to satisfy the
36 director's concerns within sixty days after the director has notified the
37 conservation district of the determination, the district's plan shall expire.

38 Sec. 9. Section 45-859.01, Arizona Revised Statutes, is amended to
39 read:

40 45-859.01. Conservation district account; replenishment reserve
41 subaccount; debits and credits

42 A. The director shall establish a long-term storage account and a
43 conservation district account for each active management area in which a
44 member land or member service area is or may be located. The director shall
45 establish a replenishment reserve subaccount within the long-term storage

1 account for each active management area in which a member land or member
2 service area is or may be located.

3 B. For each reporting year, the groundwater replenishment obligation
4 as defined in section 48-3701 for each active management area shall be
5 debited from the conservation district account for that active management
6 area.

7 C. For each reporting year, the contract replenishment obligation as
8 defined in section 48-3701 for each active management area shall be debited
9 from the conservation district account for that active management area.

10 D. On application by a conservation district to the director, credits
11 in the conservation district's long-term storage account for an active
12 management area, including credits earned through the use of excess capacity
13 of each project permitted under article 6 of this chapter, shall be
14 transferred and credited to its conservation district account for the same
15 active management area.

16 E. After January 1, 2030 OR EARLIER, ON APPROVAL OF THE DIRECTOR OF
17 WATER RESOURCES PURSUANT TO SUBSECTION K OF THIS SECTION, on application by a
18 conservation district to the director, credits in the conservation district's
19 replenishment reserve subaccount for an active management area shall be
20 transferred and credited to its conservation district account for the same
21 active management area, except that any such transfer that would cause the
22 balance in the replenishment reserve subaccount for an active management area
23 to fall below twenty-five per cent of the reserve target for that active
24 management area shall be subject to the approval of the director.

25 F. Except as provided in subsection E of this section, credits in a
26 replenishment reserve subaccount may be assigned or transferred out of the
27 replenishment reserve subaccount only on application by the conservation
28 district to the director and only if the director determines that the
29 assignment or transfer is warranted due to a reduction in the reserve target
30 as defined in section 48-3701. If credits in a replenishment reserve
31 subaccount are assigned or transferred to any account other than a
32 conservation district account, then five per cent of the assigned or
33 transferred credits shall be permanently extinguished.

34 G. For each reporting year, the director shall credit the conservation
35 district's conservation district account by the amount of water stored by the
36 conservation district during the reporting year, if the conservation district
37 has requested the director to credit the stored water directly to its
38 conservation district account and the stored water would otherwise be
39 eligible for credits in a long-term storage account.

40 H. For each reporting year, the director shall credit the conservation
41 district's replenishment reserve subaccount for each active management area
42 by the amount of long-term storage credits developed by the conservation
43 district in that active management area during the reporting year for that
44 purpose.

1 I. By October 31 of each year, the director shall determine whether
2 the conservation district has completed the groundwater replenishment
3 obligation for each active management area as prescribed by section 48-3771.

4 J. Credits in a conservation district account may not be assigned or
5 transferred out of the conservation district account.

6 K. A CONSERVATION DISTRICT MAY APPLY TO THE DIRECTOR TO TRANSFER
7 CREDITS IN THE CONSERVATION DISTRICT'S REPLENISHMENT RESERVE SUBACCOUNT FOR
8 AN ACTIVE MANAGEMENT AREA TO ITS CONSERVATION DISTRICT ACCOUNT FOR THE SAME
9 ACTIVE MANAGEMENT AREA EARLIER THAN JANUARY 1, 2030. THE APPLICATION SHALL
10 SPECIFY THE REASON FOR THE REQUEST, STATE THE AMOUNT OF CREDITS SOUGHT TO BE
11 TRANSFERRED AND INCLUDE A PLAN FOR REPLACING THE CREDITS IN THE REPLENISHMENT
12 RESERVE SUBACCOUNT. THE DIRECTOR SHALL APPROVE THE APPLICATION IF THE
13 DIRECTOR DETERMINES THAT BOTH OF THE FOLLOWING APPLY:

14 1. THE CONSERVATION DISTRICT HAS DEMONSTRATED GOOD CAUSE FOR THE
15 TRANSFER.

16 2. THE CONSERVATION DISTRICT'S PLAN FOR REPLACING THE TRANSFERRED
17 CREDITS IS ADEQUATE.

18 Sec. 10. Section 45-896.01, Arizona Revised Statutes, is amended to
19 read:

20 45-896.01. Assumption of responsibility for stored water

21 A. Notwithstanding section 45-895.01, if a groundwater replenishment
22 district is established pursuant to title 48, chapter 27 on or before July 1,
23 1996 in the Phoenix active management area:

24 1. The multi-county water conservation district and the groundwater
25 replenishment district shall share equally any water that is stored in a
26 state demonstration project in that active management area. The shares shall
27 be calculated after the director has determined the amount of stored water to
28 be reserved pursuant to paragraph 2 of this subsection.

29 2. The director shall determine the quantity of any water that is
30 stored for the benefit of municipal and industrial users that are not member
31 lands or member service areas of the multi-county water conservation district
32 and that are located in Maricopa county and the right to use that amount of
33 water is reserved to those municipal and industrial users. Those municipal
34 and industrial users may recover and use the water as otherwise provided by
35 statute or rule but shall apply to the multi-county water conservation
36 district for the use of the water.

37 3. On or before December 31, 1996, unexpended and unencumbered monies,
38 liabilities, facilities and equipment of a state demonstration project shall
39 be transferred to the multi-county water conservation district and the
40 groundwater replenishment district in equal shares.

41 B. Notwithstanding section 45-895.01, if a permanent active management
42 area water district is established pursuant to title 48, chapter 28 on or
43 before July 1, 1996 in the Tucson active management area:

44 1. The multi-county water conservation district and the active
45 management area water district shall share equally any water that is stored

1 in a state demonstration project located in that active management area. The
2 shares shall be calculated after the director has determined the amount of
3 stored water to be reserved pursuant to paragraph 2 of this subsection.

4 2. The director shall determine the quantity of any water that is
5 stored for the benefit of municipal and industrial users that are not member
6 lands or member service areas of the multi-county water conservation district
7 and that are located in Pima county and the right to use that amount of water
8 is reserved to those municipal and industrial users. Those municipal and
9 industrial users may recover and use the water as otherwise provided by
10 statute or rule but shall apply to the multi-county water conservation
11 district for the use of the water.

12 3. On or before December 31, 1996, unexpended and unencumbered monies,
13 liabilities, facilities and equipment of a state demonstration project shall
14 be transferred to the multi-county water conservation district and the active
15 management area water district in equal shares.

16 C. Notwithstanding section 45-895.01 and only to the extent that
17 subsection A or B of this section does not apply:

18 1. Not later than December 31, 1996, facilities, equipment and
19 liabilities of a state demonstration project located in a multi-county water
20 conservation district shall be transferred to the multi-county water
21 conservation district.

22 2. The multi-county water conservation district shall use the monies
23 in the state water storage fund established by section 45-897.01 to
24 expediently store water and construct underground storage facilities until
25 that fund is exhausted.

26 3. On July 1, 1996 the multi-county water conservation district shall
27 assume responsibility for water that is stored by that date in a state
28 demonstration project located in the district. ~~Before July 1, 1996 the~~
29 ~~director shall determine the quantity of water that has been stored for the~~
30 ~~benefit of municipal and industrial users that are located in Maricopa or~~
31 ~~Pima counties but that are not member lands or member service areas of the~~
32 ~~multi-county water conservation district. The right to use that quantity of~~
33 ~~water is reserved for the benefit of those municipal and industrial~~
34 ~~users. The water not reserved for this purpose shall be used for the benefit~~
35 ~~of member lands or member service areas of the multi-county water~~
36 ~~conservation district THAT ARE LOCATED IN THE ACTIVE MANAGEMENT AREA IN WHICH~~
37 ~~THE WATER WAS ORIGINALLY STORED.~~

38 4. Periodically after July 1, 1996, until the state water storage fund
39 is exhausted, the director shall determine the quantity of water that has
40 been stored with the use of monies from the state water storage fund for the
41 benefit of municipal and industrial users that are located in Maricopa or
42 Pima county but that are not member lands or member service areas of the
43 multi-county water conservation district. The director shall transfer those
44 quantities of long-term storage credits to the Arizona water banking
45 authority. The Arizona water banking authority shall use the long-term

1 storage credits transferred pursuant to this paragraph in accordance with
2 section 45-2457, subsection 8, paragraph 7.

3 5. Long-term storage credits THAT ARE earned after July 1, 1996 with
4 the use of monies in the state water storage fund established by section
5 45-897.01 AND that are not transferred to the Arizona water banking authority
6 pursuant to paragraph 4 of this subsection shall be transferred to the
7 multi-county water conservation district and shall be used for the benefit of
8 member lands or member service areas of the multi-county water conservation
9 district.

10 Sec. 11. Section 48-3701, Arizona Revised Statutes, is amended to
11 read:

12 48-3701. Definitions

13 In this chapter, unless the context otherwise requires:

14 1. "Active management area" means an active management area
15 established under title 45, chapter 2, article 2.

16 2. "Board" means the board of directors of a multi-county water
17 conservation district.

18 3. "Contract replenishment obligation" means an amount of groundwater
19 that the district contracts to replenish in a year on behalf of a municipal
20 provider pursuant to a contract authorized under section 48-3772, subsection
21 B, paragraph 9.

22 4. "Credits" means any groundwater in addition to the amount of
23 groundwater that may be used at a member land or delivered within a member
24 service area for use within the member service area pursuant to the
25 applicable assured water supply rules adopted by the department of water
26 resources.

27 5. "Declaration" means an instrument recorded against real property
28 and conforming to the requirements prescribed by section 48-3774, subsection
29 A, paragraph 5.

30 6. "District" means a multi-county water conservation district
31 organized under the authority of this chapter.

32 7. "Excess groundwater" means an amount of groundwater equal to that
33 amount of groundwater delivered to a member land in a calendar year or
34 delivered within a member service area by the municipal provider for that
35 member service area in a calendar year in excess of the amount of groundwater
36 that may be used at the member land in that calendar year or that may be
37 delivered by the municipal provider for use within the member service area in
38 that calendar year and consistent with the applicable assured water supply
39 rules adopted by the department of water resources for the active management
40 area where the member land or the member service area is located.

41 8. "Excess groundwater increment" means the amount by which excess
42 groundwater reported for a member service area under section 48-3775,
43 subsection B in any year exceeds the maximum amount of excess groundwater
44 reported for that member service area in any prior year.

1 9. "Groundwater replenishment obligation" means, for each active
2 management area in which member lands or member service areas are or may be
3 located, the total of the cumulative parcel replenishment obligation of all
4 parcels of member land in that active management area for a particular
5 calendar year plus the cumulative service area replenishment obligation of
6 all member service areas in that active management area for a particular
7 calendar year.

8 10. "Member land" means any real property that meets the requirements
9 of section 48-3774.

10 11. "Member service area" means the service area of a municipal
11 provider that qualifies as a member service area under section 48-3780,
12 including any additions to or extensions of the service area.

13 12. "Multi-county water conservation district" means a district
14 composed of three or more counties that have joined together for the creation
15 of a district.

16 13. "Municipal provider" means a city, town or private water company or
17 an irrigation district that supplies water for non-irrigation use.

18 14. "Parcel of member land" means any portion of member land for which
19 the tax assessor for the county in which the member land is located has
20 issued a separate county parcel number.

21 15. "Parcel replenishment obligation" means, with respect to any
22 particular parcel of member land, an amount of groundwater that is equal to
23 the amount of groundwater delivered to the parcel of member land in a
24 calendar year multiplied by the percentage that the excess groundwater of the
25 applicable member land for that year bears to the total amount of groundwater
26 delivered to the applicable member land during that year.

27 16. "Population" means the population determined in the most recent
28 United States decennial census.

29 17. "Private water company" has the same meaning prescribed in section
30 45-402.

31 18. "PROJECTED ONE HUNDRED YEAR REPLENISHMENT OBLIGATION" MEANS FOR
32 EACH ACTIVE MANAGEMENT AREA, THE DISTRICT'S TOTAL PROJECTED ANNUAL
33 GROUNDWATER REPLENISHMENT OBLIGATION AT ACTIVE MANAGEMENT AREA BUILD-OUT,
34 MULTIPLIED BY ONE HUNDRED.

35 ~~18.~~ 19. "Replenish" means to increase the amount of groundwater in an
36 aquifer through water storage pursuant to title 45, chapter 3.1 for the
37 purpose of meeting the obligations of article 4 of this chapter.

38 ~~19.~~ 20. "Reserve target" means, ~~for each active management area,~~
39 ~~twenty times the sum of the district's total projected average annual~~
40 ~~replenishment obligations, as reported by the director of water resources~~
41 ~~pursuant to section 45-576, subsection F and section 45-578, subsection F,~~
42 ~~for all parcels of category 1 member land as prescribed in section 48-3774.01~~
43 ~~and all member service areas in that active management area. Reserve target~~
44 ~~does not include replenishment obligations under resolutions adopted pursuant~~
45 ~~to section 48-3772, subsection B, paragraph 10 or replenishment obligations~~

1 ~~that will be met using water supplies that are currently held by the district~~
2 ~~and that are determined by the director of water resources to be consistent~~
3 ~~with assured water supply requirements pursuant to section 45-576~~ THE VOLUME
4 CALCULATED FOR EACH ACTIVE MANAGEMENT AREA AS PRESCRIBED BY SECTION 48-3772,
5 SUBSECTION E.

6 ~~20.~~ 21. "Resolution" means a resolution adopted by the governing body
7 of a city or town, by the board of directors of a private water company that
8 is a corporation, by the general partners of a private water company that is
9 a partnership or by the individual owners of a private water company that is
10 individually owned.

11 ~~21.~~ 22. "Secretary" means the secretary of the interior of the United
12 States of America.

13 ~~22.~~ 23. "Service area" has the same meaning prescribed in section
14 45-402.

15 ~~23.~~ 24. "Service area replenishment obligation" means, with respect to
16 any particular member service area, the excess groundwater of that member
17 service area in a particular calendar year reduced by the replenishment
18 credits, if any, applied by the municipal provider with respect to the member
19 service area under section 48-3772, subsection H.

20 ~~24.~~ 25. "Water storage" has the same meaning prescribed in section
21 45-802.01.

22 Sec. 12. Section 48-3771, Arizona Revised Statutes, is amended to
23 read:

24 48-3771. District replenishment obligations; replenishment
25 location; source of replenishment; exception

26 A. For each active management area in which member lands or member
27 service areas are or may be located, the district shall replenish groundwater
28 in an amount equal to the groundwater replenishment obligation for that
29 active management area. EXCEPT AS PROVIDED IN SECTION 48-3781, SUBSECTION G,
30 the district shall complete the replenishment of the groundwater
31 replenishment obligation of that active management area applicable to a
32 particular year within three full calendar years after the year that the
33 district incurs the groundwater replenishment obligation. Replenishment of
34 the groundwater replenishment obligation of an active management area
35 applicable to a particular year is complete when the amount of water added to
36 aquifers through water storage that has been credited directly to the
37 district's conservation district account pursuant to title 45, chapter 3.1,
38 plus long-term storage credits that have been transferred from the district's
39 long-term storage account to its conservation district account pursuant to
40 title 45, chapter 3.1, less the groundwater replenishment obligation of
41 member lands and member service areas located in the active management area
42 and applicable to previous years, less the contract replenishment obligations
43 relative to municipal providers in the active management area for previous
44 years and the year of the calculation, equals or exceeds the groundwater
45 replenishment obligation of the active management area for that year.

1 B. With respect to the portion of the groundwater replenishment
2 obligation attributable to a parcel of member land or a member service area,
3 the district shall replenish groundwater in the active management area where
4 the parcel of member land or the member service area is located in an amount
5 equal to the groundwater replenishment obligation applicable to that parcel
6 of member land or that member service area.

7 C. Except as provided by title 45, chapter 3.1, the district may
8 replenish groundwater with central Arizona project water or water from any
9 other lawfully available source except groundwater withdrawn from within an
10 active management area.

11 D. Notwithstanding any other provision of this chapter, if a parcel of
12 member land is included in the service area of a municipal provider that is
13 not a member service area but that has been designated as having an assured
14 water supply under section 45-576, the parcel of member land has no parcel
15 replenishment obligation and the district has no groundwater replenishment
16 obligation attributable to that parcel of member land for as long as the
17 designation remains in effect.

18 E. Notwithstanding any other provision of this chapter, if a parcel of
19 member land is included in the service area of a municipal provider that is a
20 member service area and that has been designated as having an assured water
21 supply under section 45-576, the parcel of member land has no further parcel
22 replenishment obligation.

23 Sec. 13. Section 48-3772, Arizona Revised Statutes, is amended to
24 read:

25 48-3772. Duties and powers of district regarding replenishment

26 A. The district shall:

27 1. Establish annually the costs and expenses to replenish groundwater
28 pursuant to this article with respect to all parcels of member lands and all
29 member service areas located in each active management area, including
30 capital expenses, the operation, maintenance, replacement and administrative
31 costs and expenses of the district, replenishment reserve costs and expenses
32 as provided in subsection E of this section and reasonable
33 reserves. Separate calculations of costs and expenses shall be made for each
34 active management area in which member lands or member service areas are
35 located and for each membership category. Costs and expenses attributed by
36 the district to contract replenishment obligations shall not be included in
37 these calculations.

38 2. Provide for the payment of all costs and expenses to replenish
39 groundwater pursuant to this chapter and the payment of operation,
40 maintenance, replacement and administrative costs and expenses of the
41 district.

42 3. Levy an annual replenishment assessment against each parcel of
43 member land pursuant to section 48-3778 and an annual replenishment tax
44 against each municipal provider that has a member service area pursuant to

1 section 48-3781 to pay the district's costs and expenses as established
2 pursuant to paragraph 1 of this subsection.

3 4. Levy a contract replenishment tax against municipal providers that
4 are parties to contracts authorized under subsection B, paragraph 9 of this
5 section to pay the district's costs and expenses to replenish groundwater
6 based on contract replenishment obligations.

7 5. Establish and maintain reserve accounts in amounts as may be deemed
8 necessary to perform the district's obligations under this article.

9 6. Fulfill all obligations under resolutions adopted pursuant to
10 subsection B, paragraph 10 of this section.

11 7. LEVY AN ACTIVATION FEE AS FOLLOWS:

12 (a) FOR SUBDIVISIONS WITHIN MEMBER LANDS AND MEMBER SERVICE AREAS THAT
13 ARE ENROLLED BEFORE MAY 6, 2004 AND THAT HAD NOT BEEN ISSUED A PUBLIC REPORT
14 BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE DISTRICT
15 SHALL LEVY A ONE-TIME ACTIVATION FEE AGAINST EACH HOUSING UNIT TO BE
16 CONSTRUCTED WITHIN THE SUBDIVISION.

17 (b) FOR SUBDIVISIONS WITHIN MEMBER LANDS AND MEMBER SERVICE AREAS THAT
18 ARE ENROLLED ON OR AFTER MAY 6, 2004, THE DISTRICT SHALL LEVY A ONE-TIME
19 ACTIVATION FEE AGAINST EACH HOUSING UNIT TO BE CONSTRUCTED WITHIN THE
20 SUBDIVISION.

21 (c) THE ACTIVATION FEE SHALL BE PAID TO THE DISTRICT BEFORE ISSUANCE
22 OF A PUBLIC REPORT FOR EACH REAL ESTATE SUBDIVISION IDENTIFIED IN SUBDIVISION
23 (a) OR (b) OF THIS PARAGRAPH, AS PROVIDED IN SECTION 45-576, SUBSECTION C.

24 (d) THE ACTIVATION FEE SHALL BE ESTABLISHED ANNUALLY BY THE DISTRICT.
25 REVENUES FROM THE ACTIVATION FEE TOGETHER WITH REVENUES FROM OTHER SOURCES
26 THAT ARE LEGALLY AVAILABLE TO THE DISTRICT FOR THOSE USES SHALL BE USED BY
27 THE DISTRICT TO ACQUIRE WATER RIGHTS AND DEVELOP INFRASTRUCTURE NECESSARY FOR
28 THE DISTRICT TO PERFORM ITS REPLENISHMENT OBLIGATIONS.

29 B. The district may:

30 1. Acquire, develop, construct, operate, maintain, replace and acquire
31 permits for water storage, storage facilities and recovery wells for
32 replenishment purposes.

33 2. Acquire, transport, hold, exchange, own, lease, store or replenish
34 water, except groundwater withdrawn from an active management area, subject
35 to the provisions of title 45, for the benefit of member lands and member
36 service areas.

37 3. Acquire, hold, exchange, own, lease, retire or dispose of water
38 rights for the benefit of member lands and member service areas.

39 4. Require municipal providers to provide such information, in such
40 form and within the time limits prescribed by the district, as may be
41 necessary to carry out the purpose of this chapter.

42 5. Levy and collect assessments, fees, charges, taxes and other
43 revenues as are provided in this chapter for the financing of replenishment
44 activities.

1 6. Contract for or perform feasibility studies of water storage,
2 storage facilities and recovery wells for replenishment purposes.

3 7. Acquire real and personal property for water storage, storage
4 facilities and recovery wells for replenishment purposes by purchase, lease,
5 donation, dedication, exchange or other lawful means.

6 8. Use any facilities and any excess storage capacity of any state
7 demonstration projects undertaken pursuant to title 45, chapter 3.1 for water
8 storage for replenishment purposes.

9 9. Subject to subsection G of this section, contract with any
10 municipal provider having a member service area to replenish groundwater on
11 behalf of the municipal provider and with respect to the member service area
12 in an amount in excess of the sum of the service area replenishment
13 obligations applicable to the member service area for all years in which the
14 district has not completed the replenishment of the groundwater replenishment
15 obligation for the member service area.

16 10. Adopt resolutions granting water availability status to a member
17 service area of a city, town or private water company and committing to
18 replenish a specified average annual volume of water in a location where the
19 city, town or private water company may physically access the water for
20 service to its customers, if all of the following apply:

21 (a) The district has reviewed its requirements for transportation of
22 central Arizona project water, its contracts, subcontracts, letter
23 agreements, excess water contracts, and other contractual obligations and its
24 member service area and member land requirements and has determined that the
25 district can meet those obligations and that capacity remains in the central
26 Arizona project to meet the obligations undertaken through the resolution.

27 (b) The resolution acknowledges that the commitment to replenish the
28 specified average annual volume of water in the location cited in the
29 resolution shall be a permanent obligation of the district, unless one of the
30 following applies:

31 (i) A permanent substitute supply of water is found for the city, town
32 or private water company and the substitution is approved by the director of
33 water resources, thus terminating the water availability status of the member
34 service area.

35 (ii) The requirements of section 45-576.07, subsection A are not met,
36 and thus the director of water resources does not issue an order granting or
37 maintaining the city, town or private water company as having an assured
38 water supply based in whole or in part on section 45-576.07. If no order is
39 issued within two years of the district adopting the resolution, the
40 resolution may be repealed, and the district shall be relieved of all
41 obligations under the resolution.

42 (c) The average annual volume of water specified in the resolution,
43 when added to the average annual volume of water specified in all other
44 resolutions adopted pursuant to this paragraph, does not exceed twenty
45 thousand acre-feet.

1 (d) The district has entered into an agreement with the city, town or
2 private water company under which the city, town or private water company
3 will hold for the district's future use, and provide to the district when
4 needed, sufficient water to meet the obligations undertaken by the district
5 through the resolution.

6 (e) The district determines that the obligations undertaken by the
7 district through the resolution will not increase annual replenishment
8 assessment rates or costs to central Arizona project contract and subcontract
9 holders and its member service areas and member lands.

10 (f) The director of water resources has found, pursuant to section
11 45-576.07, subsection H, that the district has the capability to grant water
12 availability status to member service areas.

13 11. Provide in resolutions adopted pursuant to paragraph 10 of this
14 subsection that the district may fulfill its obligations under the resolution
15 in any year by directly delivering to the city, town or private water company
16 the water that otherwise would have been replenished pursuant to the
17 resolution, if all of the following apply:

18 (a) The district has reviewed its requirements for transportation of
19 central Arizona project water, its contracts, subcontracts, letter
20 agreements, excess water contracts, and other contractual obligations, its
21 member service area and member land requirements and has determined that the
22 district can meet those obligations and that capacity remains in the central
23 Arizona project to make direct deliveries pursuant to this paragraph.

24 (b) The district determines that the delivery will not increase annual
25 replenishment assessment rates or costs to central Arizona project contract
26 and subcontract holders, its member service area and member lands.

27 12. Enter into agreements with a city, town or private water company
28 that will have water made available to it through a resolution adopted
29 pursuant to paragraph 10 of this subsection and under which the city, town or
30 private water company compensates the district for the costs and fair value
31 of the water supply provided by the district.

32 C. The functions of the district under subsection B, paragraph 1 of
33 this section may be performed on behalf of the district by other persons
34 under contract with the district.

35 D. For purposes of determining the annual costs and expenses of the
36 district under subsection A, paragraph 1 of this section, the district shall
37 amortize capital costs and expenses, including interest as determined by the
38 district, over the useful life of the capital improvements, as determined by
39 the district. The capital costs of the facilities of any state demonstration
40 projects used by the district pursuant to subsection B, paragraph 8 of this
41 section shall not be included in the capital costs and expenses amortized by
42 the district under this subsection.

43 E. The district shall establish and maintain a replenishment reserve
44 as follows:

1 1. THE DISTRICT SHALL CALCULATE A RESERVE TARGET FOR EACH OF THE THREE
2 ACTIVE MANAGEMENT AREAS WITHIN THE DISTRICT AND SHALL IDENTIFY THE RESERVE
3 TARGET IN THE PLAN OF OPERATION PREPARED PURSUANT TO SECTION 45-576.02. THE
4 RESERVE TARGET FOR EACH ACTIVE MANAGEMENT AREA SHALL BE CALCULATED AS
5 FOLLOWS:

6 (a) ESTABLISH THE PROJECTED ONE HUNDRED YEAR REPLENISHMENT OBLIGATION
7 FOR EACH ACTIVE MANAGEMENT AREA. FOR THE PURPOSES OF THIS SUBDIVISION, EACH
8 ACTIVE MANAGEMENT AREA'S PROJECTED ONE HUNDRED YEAR REPLENISHMENT OBLIGATION
9 DOES NOT INCLUDE REPLENISHMENT OBLIGATIONS UNDER RESOLUTIONS ADOPTED PURSUANT
10 TO SUBSECTION B, PARAGRAPH 10 OF THIS SECTION OR REPLENISHMENT OBLIGATIONS
11 FOR CATEGORY 2 MEMBER LANDS.

12 (b) SUBTRACT FROM THE ACTIVE MANAGEMENT AREA'S PROJECTED ONE HUNDRED
13 YEAR REPLENISHMENT OBLIGATION THE SUM OF THE FOLLOWING VOLUMES OF WATER
14 DERIVED FROM SOURCES IDENTIFIED IN THE PLAN AS WATER THAT THE DISTRICT PLANS
15 TO USE TO MEET ITS REPLENISHMENT OBLIGATIONS FOR THAT ACTIVE MANAGEMENT AREA:

16 (i) THE ANNUAL VOLUME OF EACH NONDECLINING, LONG-TERM MUNICIPAL AND
17 INDUSTRIAL SUBCONTRACT FOR CENTRAL ARIZONA PROJECT WATER MULTIPLIED BY ONE
18 HUNDRED.

19 (ii) THE ANNUAL VOLUME OF WATER UNDER LEASES OR CONTRACTS THAT CAN BE
20 MADE PHYSICALLY AND LEGALLY AVAILABLE TO THE DISTRICT CONSISTENT WITH THE
21 RULES ADOPTED PURSUANT TO SECTION 45-576, SUBSECTION H, MULTIPLIED BY THE
22 NUMBER OF YEARS, NOT TO EXCEED ONE HUNDRED, IN WHICH THE WATER IS TO BE MADE
23 AVAILABLE TO THE DISTRICT. THE WATER NEED NOT BE CONTINUOUSLY AVAILABLE TO
24 BE INCLUDED IN THIS ITEM. A LEASE OR CONTRACT SHALL NOT BE CONSIDERED UNDER
25 THIS ITEM IF THE WATER TO BE MADE AVAILABLE UNDER THE LEASE OR CONTRACT IS
26 FOR A TERM OF LESS THAN TWENTY YEARS.

27 (iii) THE TOTAL VOLUME OF GROUNDWATER THAT THE DISTRICT PLANS TO
28 TRANSPORT TO THE ACTIVE MANAGEMENT AREA DURING THE NEXT ONE HUNDRED YEARS AS
29 ALLOWED BY TITLE 45, CHAPTER 2, ARTICLE 8.1.

30 (iv) THE TOTAL VOLUME OF ALL SOURCES OF WATER NOT IDENTIFIED IN ITEMS
31 (i), (ii) OR (iii) OF THIS SUBDIVISION THAT WILL NOT BE HELD BY THE DISTRICT
32 UNDER A LEASE OR CONTRACT. VOLUMES TO BE INCLUDED UNDER THIS ITEM MUST BE
33 CONSISTENT WITH THE RULES ADOPTED BY THE DIRECTOR PURSUANT TO SECTION 45-576,
34 SUBSECTION H.

35 (c) MULTIPLY THE RESULT FROM SUBDIVISION (b) OF THIS PARAGRAPH BY
36 TWENTY PER CENT. THE RESULT IS THE RESERVE TARGET FOR THE ACTIVE MANAGEMENT
37 AREA.

38 2. THE RESERVE TARGET FOR AN ACTIVE MANAGEMENT AREA MAY BE ADJUSTED BY
39 THE DISTRICT, SUBJECT TO THE APPROVAL OF THE DIRECTOR OF WATER RESOURCES,
40 BASED ON CHANGES IN EITHER OF THE FOLLOWING:

41 (a) THE ACTIVE MANAGEMENT AREA'S PROJECTED ONE HUNDRED YEAR
42 REPLENISHMENT OBLIGATION.

43 (b) THE VOLUMES OF WATER IDENTIFIED IN THE PLAN OF OPERATION PREPARED
44 PURSUANT TO SECTION 45-576.02 AS WATER THAT THE DISTRICT PLANS TO USE TO MEET
45 ITS REPLENISHMENT OBLIGATIONS FOR THAT ACTIVE MANAGEMENT AREA.

1 ~~1-~~ 3. The district shall include a replenishment reserve charge in
2 the annual replenishment assessment levied against all parcels of category 1
3 member land as provided in section 48-3774.01 and in the annual replenishment
4 tax levied against all municipal providers that have member service areas as
5 provided in section 48-3780.01. The replenishment reserve charge for each
6 active management area is established annually by the district based on the
7 reserve target for that active management area.

8 ~~2-~~ 4. The district shall levy a replenishment reserve fee against
9 category 1 member lands pursuant to section 48-3774.01 and against member
10 service areas pursuant to section 48-3780.01. For category 1 member lands
11 the fee is equal to twice the applicable replenishment reserve charge
12 multiplied by the total projected average annual replenishment obligation for
13 the member lands as reported by the director of water resources pursuant to
14 section 45-578, subsection F. For member service areas the fee is equal to
15 twice the applicable replenishment reserve charge multiplied by the excess
16 groundwater increment. With the approval of the district and the director of
17 water resources, long-term storage credits as defined in section 45-802.01
18 may be assigned to the district's replenishment reserve subaccount in lieu of
19 paying the replenishment reserve fee.

20 ~~3-~~ 5. The district shall use replenishment reserve charges and
21 replenishment reserve fees collected within each active management area
22 together with all interest earned on the charges and fees to store water in
23 that active management area in advance of groundwater replenishment
24 obligations for the purpose of developing long-term storage credits as
25 defined in section 45-802.01 that shall be credited to the replenishment
26 reserve subaccount for that active management area as provided in section
27 45-859.01.

28 ~~4-~~ 6. Beginning on January 1, 2030 OR EARLIER, ON APPROVAL OF THE
29 DIRECTOR OF WATER RESOURCES PURSUANT TO SECTION 45-859.01, SUBSECTION K, the
30 district may transfer credits from a replenishment reserve subaccount to a
31 conservation district account as provided in section 45-859.01 to satisfy its
32 groundwater replenishment obligations.

33 ~~5-~~ 7. If the district transfers credits from the replenishment
34 reserve subaccount for an active management area pursuant to section
35 45-859.01, subsection E, the district shall include in the annual
36 replenishment assessment levied against all parcels of category 1 member land
37 in that active management area and, except as provided in section 48-3780.01,
38 subsection B, in the annual replenishment tax levied against all municipal
39 providers that have member service areas in that active management area a
40 reserve replacement component to fund the replacement of the transferred
41 credits. The district shall use all monies from the reserve replacement
42 component collected within an active management area together with all
43 interest earned on the monies to develop long-term storage credits as defined
44 in section 45-802.01 within that active management area to be credited to the

1 replenishment reserve subaccount for that active management area as provided
2 in section 45-859.01.

3 ~~6-~~ 8. For the purposes of establishing and maintaining the
4 replenishment reserve, the district shall have access to excess central
5 Arizona project water equivalent to but no more than the access the Arizona
6 water banking authority has for the purposes specified in section 45-2401,
7 subsection H, paragraph 2.

8 F. Groundwater replenished by the district pursuant to a contract to
9 replenish groundwater under subsection B, paragraph 9 of this section shall
10 not be credited to a replenishment reserve subaccount established under
11 section 45-859.01.

12 G. The district shall not enter into a contract authorized under
13 subsection B, paragraph 9 of this section unless the district has determined
14 that the contract will not adversely affect the district's ability to fulfill
15 its obligations under this chapter. For each contract entered into under
16 subsection B, paragraph 9 of this section, the district shall perform its
17 contract replenishment obligations in the active management area in which the
18 service area of the municipal provider that is the party to the contract is
19 located.

20 H. If the district replenishes groundwater on behalf of a municipal
21 provider pursuant to a contract to replenish groundwater under subsection B,
22 paragraph 9 of this section, the amount of groundwater so replenished shall
23 be a replenishment credit to the municipal provider that may be applied by
24 the municipal provider on notice to the district to reduce the service area
25 replenishment obligations applicable to the municipal provider.

26 I. In the Phoenix active management area, the district, to the extent
27 reasonably feasible, shall replenish groundwater in the east portion of the
28 active management area and in the west portion of the active management area
29 in the approximate proportion that the groundwater replenishment obligation
30 attributable in a particular year to member lands and member service areas
31 located in the east portion of the active management area bears to the
32 groundwater replenishment obligation attributable in that year to member
33 lands and member service areas located in the west portion of the active
34 management area. For THE purposes of this subsection, the boundary between
35 the east Salt river valley subbasin and the west Salt river valley subbasin
36 is the boundary between the east and west portions of the active management
37 area.

38 J. The costs and expenses charged by the district to an active
39 management area water district established under chapter 28 of this title for
40 delivery of surplus central Arizona project water to such active management
41 area water district for replenishment purposes shall not exceed the costs and
42 expenses for delivery of such water that are or would be included by the
43 district in the costs and expenses of replenishment for member lands and
44 member service areas within the active management area in which such active
45 management area water district is situated.

1 Sec. 14. Section 48-3780, Arizona Revised Statutes, is amended to
2 read:

3 48-3780. Qualification as a member service area; termination

4 A. The service area of a municipal provider qualifies as a member
5 service area only if all of the following apply:

6 1. The service area is located in an active management area in which a
7 part of the central Arizona project aqueduct is located.

8 2. The municipal provider is not a member of a groundwater
9 replenishment district established pursuant to chapter 27 of this title.

10 3. The service area of the municipal provider is not a water district
11 member service area under chapter 28 of this title.

12 4. If the municipal provider or its predecessor previously terminated
13 member service area status pursuant to subsection B of this section, the
14 service area or any portion of the service area has not been a member service
15 area for at least ten years. The district may waive this requirement if the
16 district and the director of water resources determine that previously
17 unforeseen circumstances necessitate requalification of the service area.

18 5. If the municipal provider or its predecessor previously terminated
19 member service area status pursuant to subsection B of this section, the
20 municipal provider agrees to pay to the district all charges that would have
21 otherwise been imposed by the district had the member service area status
22 remained in effect during the period since termination became effective.

23 6. IF ALL OR A PORTION OF THE SERVICE AREA HAS PREVIOUSLY QUALIFIED AS
24 A MEMBER SERVICE AREA, THE MUNICIPAL PROVIDER AGREES TO PAY AN AMOUNT EQUAL
25 TO THE AMOUNT OF THE REPLENISHMENT TAXES ASSESSED AGAINST ITS PREDECESSOR
26 THAT WERE NOT PAID, PLUS INTEREST CALCULATED IN ACCORDANCE WITH SECTION
27 48-3782, SUBSECTION A.

28 ~~6.~~ 7. The conditions stated in section 45-576.01, subsection B,
29 paragraphs 2 and 3 are satisfied with respect to the district at the time of
30 the qualification.

31 ~~7.~~ 8. The municipal provider publishes a resolution once each week
32 for two consecutive weeks in a newspaper of general circulation in the county
33 or counties where the service area is located that:

34 (a) Has attached to it a current map of the municipal provider's
35 service area.

36 (b) Declares the intent of the municipal provider that the service
37 area qualify as a member service area under this chapter.

38 (c) Declares that, for the privilege of withdrawing and delivering
39 excess groundwater within its service area and to ensure the continued
40 exercise of that privilege, the municipal provider shall pay an annual
41 replenishment tax to be determined by the district.

42 (d) Contains a covenant, binding against the municipal provider, to
43 pay to the district an annual replenishment tax based on the service area
44 replenishment obligation in an amount determined by the district as necessary
45 to allow the district to perform the groundwater replenishment obligations.

1 (e) Authorizes the municipal provider to enter into a written
2 commitment with the district in the form and substance satisfactory to the
3 district regarding payment of the annual replenishment tax.

4 (f) Declares that the resolution applies to the service area of the
5 municipal provider as it currently exists and to all additions to and
6 extensions of the service area.

7 (g) Declares that the resolution is irrevocable for as long as the
8 district is obligated to perform the groundwater replenishment obligations.

9 B. A service area previously accepted as a member service area
10 pursuant to subsection A of this section terminates its member service area
11 status only if all of the following apply:

12 1. The municipal provider for the member service area has submitted an
13 application to the district requesting termination of member service area
14 status.

15 2. The municipal provider for the member service area has submitted an
16 application to the director of water resources requesting modification of the
17 municipal provider's assured water supply designation under section 45-576
18 that eliminates the municipal provider's reliance on member service area
19 status.

20 3. The applications provide evidence satisfactory to the director of
21 water resources that the municipal provider has obtained a substitute supply
22 of water, other than groundwater, that is determined by the director of water
23 resources to be consistent with assured water supply requirements pursuant to
24 section 45-576 and that is sufficient to eliminate the municipal provider's
25 reliance on member service area status.

26 4. The director of water resources has approved the municipal
27 provider's application to modify its assured water supply designation based
28 on the addition of the substitute water supply.

29 5. The municipal provider publishes a resolution once each week for
30 two consecutive weeks in a newspaper of general circulation in the county or
31 counties where the service area is located that:

32 (a) Has attached to it a current map of the municipal provider's
33 service area.

34 (b) Declares the intent of the municipal provider to terminate the
35 service area's member service area status.

36 (c) Declares that the district is no longer obligated to perform the
37 groundwater replenishment obligations on behalf of the service area.

38 (d) Revokes the resolution for the member service area provided for in
39 subsection A, paragraph 7 of this section.

40 6. All amounts owed by the water provider on behalf of the member
41 service area to the district have been paid.

42 7. The municipal provider has paid or made arrangements suitable to
43 the district for repayment of any capital costs incurred by the district
44 specifically on behalf of the member service area.

1 Sec. 15. Section 48-3781, Arizona Revised Statutes, is amended to
2 read:

3 48-3781. Annual replenishment tax; contract replenishment tax

4 A. On or before the third Monday of August of each year after the
5 qualification of the member service area of any municipal provider, the
6 district shall levy a replenishment tax against each municipal provider
7 having a qualified member service area for the privilege of withdrawing and
8 delivering excess groundwater within the member service area. The
9 replenishment tax shall be calculated by the district in accordance with this
10 article and shall be sufficient to produce the amount of money estimated as
11 needed to pay the costs and expenses to replenish groundwater established
12 under section 48-3772, subsection A, and taking into account any annual
13 replenishment assessment levied under section 48-3778.

14 B. The district shall promptly transmit a statement to each municipal
15 provider having a member service area stating the amount of the annual
16 replenishment tax and any replenishment reserve fee due under section
17 48-3780.01.

18 C. On or before the third Monday of August of each year after the
19 district enters into any contract to replenish water pursuant to section
20 48-3772, subsection B, paragraph 9, the district shall levy a tax against
21 each municipal provider that is a party to a contract to replenish
22 groundwater at the assessment rate provided in the applicable contract. The
23 district shall promptly transmit a statement to each municipal provider that
24 is a party to a contract to replenish groundwater stating the amount of the
25 replenishment tax due under the contract.

26 D. On or before October 15 of each year, each municipal provider that
27 has a member service area shall pay to the district an amount equal to the
28 annual replenishment tax levied by the district and any replenishment reserve
29 fee due under section 48-3780.01.

30 E. On or before October 15 of each year, each municipal provider that
31 is a party to a contract to replenish groundwater under section 48-3772,
32 subsection B, paragraph 9 shall pay to the district the contract
33 replenishment tax levied by the district pursuant to the contract.

34 F. Annual replenishment taxes and contract replenishment taxes
35 collected by the district shall be deposited, pursuant to sections 35-146 and
36 35-147, in the special fund established pursuant to section 48-3773,
37 subsection A, paragraph 3 and shall be expended by the district only for the
38 purposes authorized by this article.

39 G. If a municipal provider is delinquent for more than ninety days in
40 the payment of its replenishment tax, the district shall promptly notify the
41 director of water resources of the delinquency. EXCEPT AS PROVIDED IN
42 SUBSECTION H OF THIS SECTION, FOR ANY MUNICIPAL PROVIDER THAT IS DELINQUENT
43 FOR MORE THAN NINETY DAYS IN THE PAYMENT OF ITS REPLENISHMENT TAX, THE
44 DISTRICT SHALL COMPLETE THE REPLENISHMENT OF THE SERVICE AREA REPLENISHMENT
45 OBLIGATION. THE DISTRICT SHALL COMPLETE THAT OBLIGATION WITHIN THREE FULL

1 CALENDAR YEARS AFTER THE YEAR THAT THE DISTRICT IS PAID AN AMOUNT EQUAL TO
2 THE DELINQUENT REPLENISHMENT TAX, PLUS INTEREST CALCULATED IN ACCORDANCE WITH
3 SECTION 48-3782, SUBSECTION A, OR WITHIN TEN FULL CALENDAR YEARS AFTER THE
4 YEAR THAT THE DISTRICT INCURS THE SERVICE AREA REPLENISHMENT OBLIGATION,
5 WHICHEVER IS SOONER.

6 H. THE DISTRICT IS NOT REQUIRED TO COMPLETE THE REPLENISHMENT OF THE
7 SERVICE AREA OBLIGATION OF A MUNICIPAL PROVIDER THAT IS DELINQUENT FOR MORE
8 THAN NINETY DAYS IN THE PAYMENT OF ITS REPLENISHMENT TAX IF BOTH OF THE
9 FOLLOWING APPLY:

10 1. THE DISTRICT IS NOT PAID AN AMOUNT EQUAL TO THE DELINQUENT
11 REPLENISHMENT TAX, PLUS INTEREST CALCULATED IN ACCORDANCE WITH SECTION
12 48-3782, SUBSECTION A, WITHIN TEN FULL CALENDAR YEARS AFTER THE YEAR THAT THE
13 DISTRICT INCURS THE SERVICE AREA REPLENISHMENT OBLIGATION.

14 2. THE MUNICIPAL PROVIDER OR ITS SUCCESSOR HAS VIOLATED SECTION
15 45-492, SUBSECTION D OR SECTION 45-493, SUBSECTION D AND THE DIRECTOR OF
16 WATER RESOURCES HAS NOT COMMENCED AN ENFORCEMENT ACTION AGAINST THE MUNICIPAL
17 PROVIDER OR ITS SUCCESSOR FOR THE VIOLATION WITHIN TEN FULL CALENDAR YEARS
18 AFTER THE YEAR THAT THE DISTRICT INCURS THE SERVICE AREA REPLENISHMENT
19 OBLIGATION.

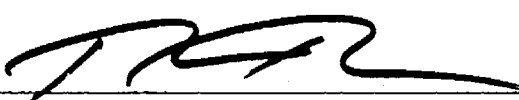

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

Passed the House April 12, 2005

by the following vote: 48 Ayes,



11 Nays, 1 Not Voting


Speaker of the House
Pro Tempore

Chief Clerk of the House

Passed the Senate February 17, 2005

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting


President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1235

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this day of , 20 ,

at o'clock M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 19, 2005

by the following vote: 23 Ayes,

5 Nays, 2 Not Voting

Kelli Bennett

President of the Senate

Charmine Ballington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

at 3:41 o'clock P. M.

Wendee Hanna

Secretary to the Governor

Approved this 25 day of

April, 2005,

at 9:45 o'clock A. M.

Jon R. Ryznar

Governor of Arizona

S.B. 1235

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005,

at 4:33 o'clock P. M.

Janice K. Brewer

Secretary of State